

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

MT ALPINE MAGNOLIA,
Petitioner,

CTA Case No. 9554

Members:

- versus -

DEL ROSARIO, P.J., Chairperson,
UY, and
MINDARO-GRULLA, JJ.

**COMMISSIONER OF BUREAU
OF CUSTOMS AND DISTRICT
COLLECTOR OF BATAAN,**
Respondents.

Promulgated:

OCT 22 2018 : 2:27 pm

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner MT Alpine Magnolia against respondents Commissioner of Bureau of Customs and District Collector of Bataan on March 24, 2017, praying that the Decision of the District Collector of Bataan ("District Collector"), which was deemed affirmed by the Commissioner of Customs ("Commissioner") be reversed and set aside, and that the order of forfeiture of MT Alpine Magnolia which has an estimated value of One Billion Pesos (Php1,000,000,000.00) be cancelled or lifted.¹

PARTIES

Petitioner, MT Alpine Magnolia, is an ocean going tanker vessel registered under the laws of Marshall Islands. It is technically managed and operated by Sea World Management and Trading Inc. ("Sea World"), a corporation organized and existing under the laws of Liberia, which has an established office in Greece. It is commercially managed by ST Shipping and Transport Pte. Ltd. ("ST Shipping"), a duly organized and existing corporation under the laws of Singapore. It may

¹ Pre-Trial Order (PTO), CTA Docket, p. 2880.

on

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be served with court processes through the office address of its counsel of record at 14th Floor, Del Rosario Law Centre, 21st Drive corner 20th Drive, Bonifacio Global City, 1630 Taguig, Metro Manila.²

Respondent Commissioner, who is tasked to generally supervise and enforce tariff and customs laws in the Philippines, may be served with court processes at the Bureau of Customs Building, South Harbor, Gate 3, Port Area, Manila.³

Respondent District Collector, who is tasked to enforce tariff and customs laws in the port district of Bataan, may be served with court processes at Old National Road, Lamao, Limay, Bataan.⁴

FACTS

In a Voyage Charter Party dated December 2, 2016, petitioner MT Alpine Magnolia, through ST Shipping, was chartered by Glencore Singapore Pte Ltd.⁵ After being cleared by the Singaporean authorities, petitioner left Singapore *en route* to the designated discharge port in Tagoloan Misamis Oriental/Cagayan de Oro to deliver cargo of fuel oil to receiver/importer SL Harbor Bulk Terminal Corporation ("SL") from shipper/charterer Glencore Singapore Pte Ltd. on December 9, 2016.⁶

On December 11, 2016, the Master/Captain of MT Alpine Magnolia, Jerry Olores, sent an email to Coastway Shipping Agency Corp. ("Coastway"), the charterer's designated ship agent which was responsible for preparation and filing of necessary documents with the Bureau of Customs (BOC) and other government agencies. In said email, the Master advised Coastway of the vessel and cargo details and necessary arrival information.⁷

On December 12, 2016, the Master received an instruction via email from petitioner's commercial manager - ST Shipping revising the

² PTO, CTA Docket, p. 2881.

³ PTO, CTA Docket, p. 2881.

⁴ PTO, CTA Docket, p. 2881.

⁵ Annex 2 of the Affidavit of Nelson A. Romero, Exhibit "P-1-10", CTA Docket, pp. 1370-1432, 1388.

⁶ Judicial Affidavit of Captain Jerry Olores, Exhibit "P-4", CTA Docket, p. 1166-1176, 1169; Port Clearance Certificate issued by Maritime and Port Authority of Singapore, Republic of Singapore, Exhibit "P-4-7", CTA Docket, p. 1182.

⁷ Judicial Affidavit of Captain Jerry Olores, Exhibit "P-4", CTA Docket, p. 1169.



discharge port, thereby identifying SL Limay as first discharge port and followed by second discharge port which is Tagoloan.⁸

On December 13, 2016, the Master received another instruction through email from ST Shipping instructing full discharge at SL Limay Bataan.⁹

On December 14, 2016 (at 2242H), petitioner arrived in Limay, Bataan and the Master tendered a Notice of Readiness (NOR) to the appropriate parties per Charter Party's terms.¹⁰

On December 15, 2016 (at 0005H), port authorities went onboard to conduct the entry formalities proceeding. Those who went onboard were the following, namely: (i) Quarantine officers – Jan Abner G. Alarcon and E. Factoran; (ii) Immigration officer - M. Dizon; (iii) BOC officers – A. Estrella, S.L. Martinez, M. Dela Cruz, D. Florencio, L. Ibanez; (iv) Mr. Nelson Romero, General Manager of Coastway; and, (v) SL's cargo surveyor.¹¹ The BOC entry boarding team required the Master to present numerous documents, including the Load Port Survey Report (LPSR). The Master provided all the available requested documents.¹² Mr. Romero, on the other hand, presented to the Master the entry formality documents for the Master's signature. The Master observed that the documents contain some clerical errors and he requested Mr. Romero that necessary corrections be made thereon. The members of the BOC boarding team noted the Master's observations and directive to Mr. Romero to rectify said errors. Mr. Romero acknowledged the inadvertence and made an assurance that he will make the necessary corrections. The Master signed the entry formality documents as there was assurance from Mr. Romero that said errors will be corrected. Mr. Romero also presented a copy of SL's letter request for special permit to discharge cargo filed with BOC Bataan with hand written approval of Deputy District Collector Dr. Zaldy Almoradie.¹³ Entry formality proceeding was completed on the same day at 0148H.¹⁴

⁸ Judicial Affidavit of Captain Jerry Olores, Exhibit "P-4", CTA Docket, p. 1170.

⁹ Judicial Affidavit of Captain Jerry Olores, Exhibit "P-4", CTA Docket, p. 1170.

¹⁰ Judicial Affidavit of Captain Jerry Olores, Exhibit "P-4", CTA Docket, p. 1170.

¹¹ Judicial Affidavit of Captain Jerry Olores, Exhibit "P-4", CTA Docket, pp. 1170-1171.

¹² PTO, CTA Docket, p. 2883.

¹³ Judicial Affidavit of Captain Jerry Olores, Exhibit "P-4", CTA Docket, p. 1171.

¹⁴ Judicial Affidavit of Captain Jerry Olores, Exhibit "P-4", CTA Docket, p. 1172.

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At 0830H, per charterer's/SL's instructions, MT Alpine Magnolia under pilotage proceeded to SL's discharge berth and all fast to SL's Conventional Buoy Mooring (CBM) at 1024H. From arrival to berthing at SL's CBM, charterer's agent and importer SL reported no problems or issues in cargo importation.¹⁵

At 1106H, SL's loading master came onboard and key meeting was held until 1148H. At 1618H, discharging of cargo commenced per instructions of SL through its loading master who was onboard.¹⁶

On December 17, 2016 (at 1012H), the BOC and the Philippine Coastguard came onboard and inquired on loop-loading and thereafter served a copy of the Warrant of Seizure and Detention (WSD).¹⁷ At 1406H, discharging was halted per BOC order and SL's confirmation. BOC personnel thereafter sealed the vessel's manifolds.¹⁸

Protecting vessel interest, Master protested the discharging stoppage and the issuance of WSD in his Letter of Protest dated 22 December 2016.¹⁹

Seizure and forfeiture proceeding was conducted.²⁰ On 20 December 2016, SL filed a Motion to Lift WSD and Supplemental Motion.²¹ The first hearing was held on 27 December 2016 during which petitioner filed an Omnibus Motion to Lift, Quash and Dismiss.²² The next hearing was on 5 January 2017 during which the Master/Captain Olores appeared.²³ The final hearing was conducted on 10 January 2017.²⁴

The District Collector of Customs of the Port of Limay, Julius B. Premediles, issued a Decision dated January 20, 2017, which was

¹⁵ Judicial Affidavit of Captain Jerry Olores, Exhibit "P-4", CTA Docket, p. 1172.

¹⁶ Judicial Affidavit of Captain Jerry Olores, Exhibit "P-4", CTA Docket, p. 1172.

¹⁷ PTO, CTA Docket, p. 2883.

¹⁸ PTO, CTA Docket, p. 2883.

¹⁹ PTO, CTA Docket, p. 2883.

²⁰ Petitioner's Memorandum, CTA Docket, p. 3141.

²¹ *Id.*

²² *Id.*

²³ Petitioner's Memorandum, CTA Docket, p. 3142.

²⁴ *Id.*



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received by petitioner on January 24, 2017, ordering the forfeiture of MT Alpine Magnolia Vessel in favor of the government.²⁵

Petitioner filed a Notice of Appeal on February 8, 2017 and submitted a Memorandum of Appeal on February 10, 2017.²⁶

The Office of the Commissioner received the record and issued an Indorsement of the case to the Deputy Commissioner, Revenue Collection Monitoring Group (Attn: Director, Legal Services) on 3 February 2017. As provided under the Customs Modernization and Tariff Act ("CMTA"), the petitioner's appeal should be resolved within thirty (30) days or by 5 March 2017. The period, however, expired without a decision being rendered by the Commissioner; thus, the petitioner's appeal was deemed dismissed.²⁷

Petitioner had thirty (30) days from March 5, 2017 or until April 4, 2017 within which to file a Petition for Review with the Court of Tax Appeals (CTA).²⁸

On March 24, 2017, petitioner filed before this Court its Petition for Review With Urgent Motion and Prayer for the Immediate Release of MT Alpine Magnolia.²⁹

On March 27, 2017, petitioner filed its Omnibus Motion (for the Immediate Raffle of the Petition for Review and for the Immediate Release of MT Alpine Magnolia from Seizure and Detention).³⁰

Summons were issued on March 29, 2017 which were received by the Office of the Commissioner and the Office of the Solicitor General ("OSG") on March 30, 2017 and by the BOC Port of Limay on March 31, 2017.³¹

²⁵ Par. 2.1 of the Petition for Review With Urgent Motion and Prayer for the Immediate Release of MT Alpine Magnolia, p. 11 in relation to Par. 2 of the Answer; Pre-Trial Order, CTA Docket, pp. 11, 2028, 2881.

²⁶ PTO, CTA Docket, p. 2882.

²⁷ Pre-Trial Order, CTA Docket, pp. 2880-2896, 2881.

²⁸ PTO, CTA Docket, p. 2882.

²⁹ CTA Docket, p. 10.

³⁰ CTA Docket, p. 1147.

³¹ CTA Docket, pp. 1155-1158.



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In a Resolution dated March 30, 2017, the Court required respondents to comment, within five (5) days from receipt of said resolution, on petitioner's Urgent Motion and Prayer for the Immediate Release of MT Alpine Magnolia contained in its Petition for Review filed on March 24, 2017, and petitioner's Omnibus Motion (for the Immediate Release of MT Alpine Magnolia from Seizure and Detention) filed on March 27, 2017, and set the case for hearing on April 4, 2017.³²

In a hearing held on April 4, 2017, petitioner's motion for the release of the vessel MT Alpine Magnolia was treated as a Motion for Suspension of Collection of Taxes under Republic Act No. 1125, without any objection from either party.³³

Petitioner filed on June 20, 2017 its Very Urgent Motion to Release Vessel on Surety Bond.³⁴ Petitioner also filed on July 10, 2017 its Urgent Motion to Resolve the Motion to Release on Surety Bond.³⁵

At the hearing on the incident, petitioner presented the testimonies of Alexandra Tsamadou, Dumpleton Richard William, Nelson Romero and Master/Captain Jerry Olores.³⁶ Respondents, on the other hand, presented Julius B. Premediles, Silvestre L. Martinez, Lorecel R. Ibañez, and Gulliber Cawaling.³⁷ Both parties also presented and eventually offered their respective documentary exhibits. After the admission of their respective documentary evidence,³⁸ and the filing of their respective memoranda,³⁹ the Court issued a Resolution on August 4, 2017 granting petitioner's motions for the release of MT Alpine Magnolia. The Court ordered the release of MT Alpine Magnolia subject to petitioner's posting of a surety bond from a reputable surety company duly accredited by the Supreme Court in the amount equivalent to One Billion Pesos and submission of supporting documents as specified in Supreme Court A.M. No. 04-7-02-SC dated July 20, 2004.⁴⁰

³² CTA Docket, p. 1162.

³³ CTA Docket, p. 1615-1617; April 4, 2017 Transcript of Stenographic Notes (TSN), p. 3.

³⁴ CTA Docket, p. 2114.

³⁵ CTA Docket, p. 2174.

³⁶ Hearing held on April 4, 2017; CTA Docket, pp. 1615-1617.

³⁷ Hearing held on April 25, 2017 and May 11, 2017; CTA Docket, pp. 1841-1844, 1847-1849, 2020-2026.

³⁸ Resolutions dated April 20, 2017 and July 3, 2017; CTA Docket, pp. 1743-1744, 2159-2160.

³⁹ CTA Docket, pp. 2185-2246, 2290-2319.

⁴⁰ CTA Docket, pp. 2455-2507.



On August 18, 2017, the Court noted, admitted and approved petitioner's Compliance With the Posting of a Surety Bond filed on August 17, 2017 and ordered respondents to immediately release MT Alpine Magnolia.⁴¹ Respondents' filed their Motion for Reconsideration (re: 4 August 2017 Resolution) on August 22, 2017, but the same was denied in a Resolution dated October 3, 2017 for lack of merit.⁴²

Relating to the main case, respondents, in their Answer posted on May 2, 2017,⁴³ interposed affirmative defenses which are summarized hereunder:

i. Petitioner was not denied due process when respondent District Collector rendered the 20 January 2017 Decision;

ii. Respondent District Collector had basis to issue the WSD and to order the subsequent forfeiture of MT Alpine Magnolia;

iii. MT Alpine Magnolia acted as a private carrier *pro hac vice* and thus was subject to seizure under Section 1113 of the CMTA.

Petitioner filed its Pre-Trial Brief on August 18, 2017,⁴⁴ while respondents' Pre-Trial Brief was filed through registered mail on September 18, 2017.⁴⁵

Pre-Trial Conference was held on September 28, 2017, where both parties' counsels stated, among others, their intention to adopt the testimonies of their respective witnesses for the same purposes for which they have been offered during the previous hearings on petitioner's urgent motion to release the vessel.⁴⁶ The Pre-Trial Order (PTO) was issued on January 17, 2018.⁴⁷ Subsequently, upon petitioner's Motion to Amend the PTO, with respondents' comment thereon, the parties' counsels agreed to stipulate during the February 20, 2018 hearing that the facts stated in paragraphs 14 and 15 of the

⁴¹ August 18, 2017 Resolution, CTA Docket, pp. 2560-2562.

⁴² CTA Docket, pp. 2745-2751.

⁴³ CTA Docket, pp. 2028-2044.

⁴⁴ CTA Docket, p. 2568.

⁴⁵ CTA Docket, p. 2707.

⁴⁶ CTA Docket, pp. 2731-2734.

⁴⁷ CTA Docket, pp. 2880-2896.



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PTO constitute statements that comprise the testimony of Captain Olores. Thus, the Motion to Amend was granted subject to the aforestated modification.⁴⁸

Petitioner filed a Formal Offer of Exhibits/Evidence on October 18, 2017 and formally offered its exhibits in the main case, which the Court observed to be the same as those exhibits offered in relation to petitioner's motion for immediate release of MT Alpine Magnolia.⁴⁹ The exhibits were admitted in a Resolution dated November 24, 2017.⁵⁰

In their Motion for Reconsideration filed on December 22, 2017, respondents assailed the Court's admission of petitioner's exhibits as well as the failure of petitioner to recall and present anew the witnessed it presented at the hearing on the motion to release the vessel when, according to respondent, the testimonies of these witnesses should not be admitted as evidence on the merits of the case unless they are subjected again to cross-examination.

In the Resolution dated January 5, 2018, the Court denied respondents' Motion for Reconsideration based on the following grounds: (i) respondents were given ample opportunity to cross examine the witnesses of petitioner during their presentation relative to petitioner's motion for the immediate release of MT Alpine Magnolia; (ii) the Court even clarified several points from petitioner's witnesses when they testified in line with the mandate of the Judicial Affidavit Rule requiring the court to take active part in examining the witness to determine his credibility as well as the truth of his testimony, and to elicit the answers that are necessary in resolving the issues; (iii) the testimonies of the witnesses had already been terminated during the April 4, 2017 hearing; (iv) petitioner already opted to rest its case by formally offering the same exhibits as that which were offered and admitted in its motion for immediate release of MT Alpine Magnolia; (v) the adoption of the previously offered and admitted exhibits during the proceeding for the ancillary relief as petitioner's exhibits in the main case is the prerogative of petitioner; (vi) it is the petitioner which has the discretion to introduce evidence to sustain its case, which necessarily includes the option to move for the recall of its witnesses or simply to adopt their previous testimonies; and, (vii) respondents cannot dictate on petitioner the evidence it should present in support of its case.⁵¹

⁴⁸ CTA Docket, p. 2965.

⁴⁹ As stated in the January 5, 2018 Resolution; Docket, pp. 2874-2877, 2875.

⁵⁰ CTA Docket, p. 2858-2859.

⁵¹ CTA Docket, pp. 2874-2877.



Respondents, on their part, presented again their witness Silvestre Martinez at the hearing held on February 20, 2018.⁵² Thereafter, they filed their *Ad Cautelam* Formal Offer of Evidence on March 1, 2018. Respondents' formally offered exhibits, except Exhibits R-1-8 and R-4, were admitted in the Resolution dated March 13, 2018.⁵³ With the filing of respondents' *Ad Cautelam* Motion for Partial Reconsideration (Re: Resolution dated March 13, 2018) on April 3, 2018, and upon termination of the scheduled commissioner's hearing which this Court allowed,⁵⁴ Exhibits R-1-8 and R-4 were eventually admitted in the Resolution dated May 21, 2018.⁵⁵

Petitioner presented the testimonies of Chiefmate Clyde E. Guzman and Master/Captain Jerry Olores as rebuttal evidence at the hearing held on March 20, 2018.⁵⁶ Petitioner filed its rebuttal Formal Offer of Exhibits/Evidence on March 22, 2018,⁵⁷ and the formally offered rebuttal exhibits were admitted in the Resolution dated May 3, 2018.⁵⁸

There being no presentation of sur-rebuttal evidence by respondents, the parties were ordered to submit their respective memoranda within thirty (30) days from receipt of the May 21, 2018 Resolution.⁵⁹

Petitioner filed its Memorandum on June 27, 2018⁶⁰ while respondents posted their *Ad Cautelam* Memorandum on July 23, 2018.⁶¹ Subsequently, respondents filed their Compliance and Manifestation⁶² on August 1, 2018 in relation to the Court's Minute Resolution⁶³ dated July 26, 2018 directing respondents to submit additional three copies of their *Ad Cautelam* Memorandum.

⁵² CTA Docket, pp. 2965-2967.

⁵³ CTA Docket, p. 2988-2989.

⁵⁴ May 3, 2018 Resolution, CTA Docket, pp. 3078-3080; May 10, 2018 Commissioner's Hearing, CTA Docket, pp. 3081-3082.

⁵⁵ CTA Docket, p. 3093-3094.

⁵⁶ CTA Docket, p. 3021-3023.

⁵⁷ CTA Docket, pp. 3028-3033.

⁵⁸ CTA Docket, pp. 3078-3080.

⁵⁹ CTA Docket, pp. 3093-3094.

⁶⁰ CTA Docket, pp. 3126-3211.

⁶¹ CTA Docket, pp. 3265-3299; Another copy was also filed on June 24, 2018; CTA Docket, pp. 3220.

⁶² CTA Docket, pp. 3311-3359.

⁶³ CTA Docket, p. 3264.



With the filing of the parties' aforesaid memoranda, this case was submitted for decision on August 6, 2018.⁶⁴

ISSUES

The parties stipulated on the following issues for the Court's resolution:

1. Whether or not the order of forfeiture of MT Alpine Magnolia, issued by respondent District Collector, which was "deemed affirmed" by the Commissioner of Customs, is lawful and valid; and,
2. Whether or not MT Alpine Magnolia should ultimately be forfeited in favor of the government.⁶⁵

PARTIES' ARGUMENTS

Petitioner submits the following propositions:

- (i) MT Alpine Magnolia is a common carrier and the voyage C/P did not convert it into a private carrier *pro hac vice*;
- (ii) Petitioner and its agents have neither knowledge nor participation in the alleged smuggling activity;
- (iii) Respondents utterly failed to prove loop-loading of cargo to MT Malolos and/or that the petitioner has knowledge or culpable participation therein;
- (iv) The issuance of the WSD is tainted with irregularities, bad faith and in violation of applicable rules;
- (v) The discharge of petitioner's cargo was legally compliant and in order;

⁶⁴ CTA Docket, p. 3310.

⁶⁵ PTO, CTA Docket, pp. 2886-2887.



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- (vi) The order of forfeiture was issued *sans* any evidence proving fraud or other grounds that will justify the vessel's forfeiture;
- (vii) Respondent District Collector and CIIS Officer Silvestre Martinez deliberately misled the Court and perjured themselves during their presentation before the Court; and,
- (viii) Petitioner has suffered and continues to suffer grave and irreparable losses, damages and prejudice.⁶⁶

On the other hand, respondents argue that:

- (i) Petitioner was not denied due process in the proceeding before respondent District Collector;
- (ii) MT Alpine Magnolia was correctly forfeited as petitioner has been unable to overturn the factual finding of respondents that it was involved in smuggling;
- (iii) Petitioner is not exempt from seizure under the CMTA;
- (iv) Respondent District Collector had probable cause to issue the WSD and the basis to order the subsequent forfeiture of MT Alpine Magnolia which petitioner failed to overcome.⁶⁷

RULING OF THE COURT

***Petitioner is a common carrier
that entered into a Voyage
Charter Party***

The Court made an extensive discussion on the concepts of a common/public carrier and a private carrier (including charter-party) in the Resolution dated August 4, 2017, viz.:

⁶⁶ CTA Docket, pp. 3126-3211.

⁶⁷ CTA Docket, pp. 3265-3299.



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In ***First Philippine Industrial Corporation vs. Court of Appeals, et al.***,⁶⁸ the Supreme Court discussed the concept of a common carrier, viz:

"A 'common carrier' may be defined, broadly, as one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally.

Article 1732 of the Civil Code defines a 'common carrier' as 'any person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.'

The test for determining whether a party is a common carrier of goods is:

1. He must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for person generally as a business and not as a casual occupation;
2. He must undertake to carry goods of the kind to which his business is confined;
3. He must undertake to carry by the method by which his business is conducted and over his established roads; and
4. The transportation must be for hire.

Based on the above definitions and requirements, there is no doubt that petitioner is a common carrier. It is engaged in the business of transporting or carrying goods, *i.e.* petroleum products, for hire as a public employment. It undertakes to carry for all persons indifferently, that is, to all persons who choose to employ its services, and transports the goods by land and for compensation. The fact that petitioner has a limited clientele does not exclude it from the definition of a common carrier. In *De Guzman vs. Court of Appeals* we ruled that:

'The above article (Art. 1732, Civil Code) makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity

⁶⁸ G.R. No. 125948, December 29, 1998.



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(in local idiom, as a 'sideline'). Article 1732 x x x **avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the 'general public,' i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population. We think that Article 1877 deliberately refrained from making such distinctions.**

So understood, the concept of 'common carrier' under Article 1732 may be seen to coincide neatly with the notion of 'public service,' under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. Under Section 13, paragraph (b) of the Public Service Act, 'public service' includes:

'every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, *with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system gas, electric light heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services.*' xxx"

In *Planters Products, Inc. vs. Court of Appeals, et al.*,⁶⁹ the Supreme Court made a disquisition on the concept of a charter-

⁶⁹ G.R. No. 101503, September 15, 1993.



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party *vis-à-vis* the concepts of a private carrier and common/public carrier in this wise:

“As earlier stated, the primordial issue here is whether a common carrier becomes a private carrier by reason of a charter-party; in the negative, whether the shipowner in the instant case was able to prove that he had exercised that degree of diligence required of him under the law.

It is said that etymology is the basis of reliable judicial decisions in commercial cases. This being so, we find it fitting to first define important terms which are relevant to our discussion.

A ‘charter-party’ is defined as a contract by which an entire ship, or some principal part thereof, is let by the owner to another person for a specified time or use; a contract of affreightment by which the owner of a ship or other vessel lets the whole or a part of her to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight; Charter parties are of two types: (a) contract of affreightment which involves the use of shipping space on vessels leased by the owner in part or as a whole, to carry goods for others; and, (b) charter by demise or bareboat charter, by the terms of which the whole vessel is let to the charterer with a transfer to him of its entire command and possession and consequent control over its navigation, including the master and the crew, who are his servants. Contract of affreightment may either be time charter, wherein the vessel is leased to the charterer for a fixed period of time, or voyage charter, wherein the ship is leased for a single voyage. In both cases, the charter-party provides for the hire of vessel only, either for a determinate period of time or for a single or consecutive voyage, the shipowner to supply the ship's stores, pay for the wages of the master and the crew, and defray the expenses for the maintenance of the ship.

Upon the other hand, the term **‘common or public carrier’** is defined in Art. 1732 of the Civil Code. The definition extends to carriers either by land, air or water which hold themselves out as ready to engage in carrying goods or transporting passengers or both for compensation as a public employment and not as a casual occupation. **The distinction between a ‘common or public carrier’**



and a 'private or special carrier' lies in the character of the business, such that if the undertaking is a single transaction, not a part of the general business or occupation, although involving the carriage of goods for a fee, the person or corporation offering such service is a private carrier.

Article 1733 of the New Civil Code mandates that common carriers, by reason of the nature of their business, should observe extraordinary diligence in the vigilance over the goods they carry. In the case of private carriers, however, the exercise of ordinary diligence in the carriage of goods will suffice. Moreover, in the case of loss, destruction or deterioration of the goods, common carriers are presumed to have been at fault or to have acted negligently, and the burden of proving otherwise rests on them. On the contrary, no such presumption applies to private carriers, for whosoever alleges damage to or deterioration of the goods carried has the onus of proving that the cause was the negligence of the carrier.

It is not disputed that respondent carrier, in the ordinary course of business, operates as a common carrier, transporting goods indiscriminately for all persons. When petitioner chartered the vessel M/V 'Sun Plum', the ship captain, its officers and compliment were under the employ of the shipowner and therefore continued to be under its direct supervision and control. Hardly then can we charge the charterer, a stranger to the crew and to the ship, with the duty of caring for his cargo when the charterer did not have any control of the means in doing so. This is evident in the present case considering that the steering of the ship, the manning of the decks, the determination of the course of the voyage and other technical incidents of maritime navigation were all consigned to the officers and crew who were screened, chosen and hired by the shipowner.

It is therefore imperative that a public carrier shall remain as such, notwithstanding the charter of the whole or portion of a vessel by one or more persons, provided the charter is limited to the ship only, as in the case of a time-charter or voyage-charter. It is only when the charter includes both the vessel and its crew, as in a bareboat or demise that a common carrier becomes private, at least insofar as the particular voyage covering the charter-party is concerned. Indubitably, a shipowner in a time or voyage charter retains possession and control of



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**the ship, although her holds may, for the moment,
be the property of the charterer.**

Respondent carrier's heavy reliance on the case of *Home Insurance Co. v. American Steamship Agencies, supra*, is misplaced for the reason that the meat of the controversy therein was the validity of a stipulation in the charter-party exempting the shipowners from liability for loss due to the negligence of its agent, and not the effects of a special charter on common carriers. At any rate, the rule in the United States that a ship chartered by a single shipper to carry special cargo is not a common carrier, does not find application in our jurisdiction, for we have observed that the growing concern for safety in the transportation of passengers and /or carriage of goods by sea requires a more exacting interpretation of admiralty laws, more particularly, the rules governing common carriers.

We quote with approval the observations of Raoul Colinvaux, the learned barrister-at-law —

As a matter of principle, it is difficult to find a valid distinction between cases in which a ship is used to convey the goods of one and of several persons. Where the ship herself is let to a charterer, so that he takes over the charge and control of her, the case is different; the shipowner is not then a carrier. But where her services only are let, the same grounds for imposing a strict responsibility exist, whether he is employed by one or many. The master and the crew are in each case his servants, the freighter in each case is usually without any representative on board the ship; the same opportunities for fraud or collusion occur; and the same difficulty in discovering the truth as to what has taken place arises . . . (*Boldfacing & underscoring supplied*)

Common carriers are regarded as such when they hold themselves out as ready to engage in carrying goods or transporting passengers or both for compensation as a public employment and not as a casual occupation. Common carriers are not, however, prevented from being let to other persons by their owners. An entire ship/vessel or its part may be let by its owner to another person for a specified time or use under the contract called charter-party. The two types of charter parties are: (1) **contract of affreightment**; and (2) **charter by demise or bareboat charter**.

A **contract of affreightment**, which involves the use of shipping space on vessels leased by the owner in part or as a whole, to carry goods for others, may either be a **time charter** (the



vessel is leased to the charterer for a fixed period of time), or **voyage charter** (the ship is leased for a single voyage). In both cases, the charter-party provides for the hire of vessel only, either for a determinate period of time or for a single or consecutive voyage, and the shipowner will supply the ship's stores, pay for the wages of the master and the crew, and defray the expenses for the maintenance of the ship.

In contrast, under **charter by demise or bareboat charter**, the whole vessel is let to the charterer with a transfer to him of its entire command and possession and consequent control over its navigation, including the master and the crew, who are his servants.

When a vessel (common/public carrier) is under contract of affreightment either in a form of time charter or voyage charter, the vessel remains as a common/public carrier. A common carrier becomes private carrier when it is under charter by demise or bareboat charter, at least insofar as the particular voyage covering the charter-party is concerned.

Evidence presented showing that petitioner's operator/manager as well as petitioner itself is a common carrier

Petitioner presented and offered the following evidence to prove, among others, that its operator or manager, Sea World, is a common carrier and/or operator of a common carrier:

Exhibits	Description
P-1-2	Sea World's Articles of Incorporation
P-1-4	Sea World's Certification of Managed Vessels

Petitioner likewise presented and offered the following evidence to establish, among others, that it is a common carrier:

Exhibits	Description
P-1-10 to P-1-10-4-4	Permanent Registration Certificate; International Tonnage Certificate; Minimum Safe Manning Certificate; International Ship Security Certificate; Cargo Ship Safety Radio Certificate; Ship sanitation control exemption from Government of Singapore; IMO Vaccination list
P-1-10-8	Affidavit of Mr. Dumpleton Richard William
P-2; P-2-1	Judicial Affidavit of Mr. Dumpleton Richard William; Witness' signature on the JA



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P-1-10-9	Bills of Lading ("BL") for the petitioner's previous voyages
P-4	Judicial Affidavit of Captain Jerry Olores

The foregoing exhibits were admitted in the Resolution dated April 20, 2017.⁷⁰

Sea World's Articles of Incorporation describes in full its purpose of creation, pertinent part of which provides:

"B. The purpose of the corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the Liberian Business Corporation Act. In addition to these general lawful acts and activities, the Corporation is specifically empowered to carry on the following activities in furtherance of its corporate purpose:

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To engage in ocean, coastwise and inland commerce, and generally **in the carriage of freight, goods, cargo in bulk, passengers, mail and personal effects by water between the various ports of the world** and to engage generally in water-borne and air-borne commerce throughout the world.

xxx

xxx

xxx

To act as ship's husband, ship brokers, custom house brokers, ship's agents, **manager of shipping property**, freight contractors, forwarding agents, warehousemen, wharfingers, ship chandlers, and general traders."

The foregoing shows that Sea World is a common carrier empowered to engage in the carriage of goods, cargo in bulk, passengers by water between various ports of the world; and to act as ship's agents and manager of shipping property. Sea World's Certification of Managed Vessels discloses the list of vessels that it manages, which includes petitioner.

For petitioner's part, the Permanent Certificate of Registry issued by the Republic of the Marshall Island⁷¹ shows that petitioner, which is owned by Magnolia Shipping Pte Ltd., is duly registered under the laws of the Republic of the Marshall Islands. The Minimum Safe Manning Certificate⁷² it presented discloses the minimum required manpower in order for petitioner to be

⁷⁰ CTA Docket, p. 1743.

⁷¹ Exhibit P-1-10; CTA Docket, p. 1357.

⁷² Exhibit P-1-10-2; CTA Docket, p. 1359.

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considered safely manned. It likewise shows that petitioner is a "chemical/oil products tanker" and its **"trading area/restrictions"** is **"International/Unrestricted"**.

The authenticated Affidavit of Dumpleton Richard William dated February 2, 2017 which was executed in Singapore⁷³ states that petitioner's commercial manager is ST Shipping which provides petitioner with chartering services; that Dumpleton Richard William, the Director and General Manager of ST Shipping, does the review and approval of business contracts and engagements negotiated and executed by ST Shipping for petitioner; that petitioner is being operated as a common carrier; that for the past voyages with various clients, petitioner had completed all its voyages without any issues; that its last voyage was chartered by Glencore Singapore Pte. Ltd (Glencore) via voyage charter party; that to the best of the affiant's knowledge, ST Shipping and petitioner and its owner/technical manager were never involved in any illegal activity much less in smuggling; and that petitioner is possessed by its owner and managers as part of their legitimate business and they are financially and commercially positioned to do so.

The Judicial Affidavit of Mr. Dumpleton Richard William dated April 3, 2017⁷⁴ basically contains the same statement provided in his previously mentioned authenticated Affidavit. In addition, his April 3, 2017 Judicial Affidavit specifies the issue/problem encountered by petitioner in its last voyage, which is the seizure and detention of petitioner since December 2016 for alleged involvement in the smuggling of petroleum products, including the damaged/injury sustained by petitioner for its continued seizure and detention with the BOC.

On the other hand, the Bills of Lading for the petitioner's previous voyages⁷⁵ show that petitioner's transportation service is offered to various clients for a fee as per charter party.

A close perusal of the Voyage C/P⁷⁶ dated 2 December 2016 reveals the following agreement between ST Shipping and Glencore involving the charter of MT Alpine Magnolia:

1. CONDITIONS OF VESSEL

Owners shall, before, at the commencement of, and throughout the voyage carried out hereunder, exercise due diligence to make and maintain the Vessel, her tanks, pumps, valves and pipelines tight, staunch, strong, in good order and condition, in every way fit for the voyage and fit to carry the cargo stated in Sections C and D of Part 1, with the

⁷³ Exhibit P-1-10-8; CTA Docket, pp. 1379-1384.

⁷⁴ Exhibit P-2; CTA Docket, pp. 1460-1465.

⁷⁵ Exhibits P-1-10-9; CTA Docket, p.1433-1452.

⁷⁶ Part of Exhibit P-1-10-8; CTA Docket, p. 1379-1432.



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Vessel's machinery, boilers and hull in a fully efficient state, and **with a full complement of Master, officers and crew who are fully qualified** (as evidenced by internationally recognized certification and, where applicable, endorsements), **and are experienced and competent to serve in the capacity for which they are hired**. Owners undertake that the Vessel shall be operated in accordance with the recommendations set out in the 1996 Edition of ISGOTT, as amended from time to time.⁷⁷

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4. ESTIMATED TIMES OF ARRIVAL

4.1 If the Master fails to comply with any of the following provisions, direct delay resulting therefrom, either at the loading or discharge port, shall not count as laytime or, if the Vessel is on demurrage, as demurrage and Owners shall be responsible for any additional loss, damage, cost and expense incurred by Charterers arising from such non-compliance provided charterers voyage orders are in accordance with governing C/P and has been received in a timely manner.⁷⁸

5. LOADING AND DISCHARGE PORT/SHIFTING

5.1. The Vessel shall be loaded and discharged at any port in accordance with Charterers' Voyage Order. xxx

5.2 Charterers shall have the option of instructing Owners to load at more than one berth at each loading port and to discharge at more than one berth at each discharge port in which event Owners shall, in the first instance, pay expenses arising from any of the following movements of the Vessel: xxx

Charterers shall reimburse Owners in respect of expenses properly incurred, arising from any of the aforementioned movements, upon presentation by Owners of all available supporting invoices evidencing prior payment by Owners as invoice by owners hub agent xxx.

5.3 Charterers shall reimburse Owners in respect of any dues and/or other charges incurred in excess of those which would have been incurred if all the cargo required to be loaded or discharged at the particular port had been loaded or discharged at

⁷⁷ CTA Docket, p. 1394.

⁷⁸ CTA Docket, p. 1396.



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the first berth only. Time used on account of shifting shall count as laytime or, if the Vessel is on demurrage, as demurrage, except as otherwise provided in Clauses 17 and 18.2.⁷⁹

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6. NOTICE OF READINESS ("NOR")

6.1 Upon arrival of the Vessel at each loading or discharge port the Master or Agents shall tender NOR to Charterers or to their order when the Vessel is ready in all respects to carry out Charterers' orders in accordance with the provisions of this Charter. Such NOR may be tendered either by letter, telex or email facsimile, or telephone (but if NOR is tendered by facsimile or telephone it shall subsequently be confirmed promptly by telex or email or fax). Owners shall provide Charterers with an NOR Certificate signed by the Master and a Terminal representative provided obtainable in respect of each port at which the Vessel loads or discharges.⁸⁰

8. CARGO TRANSFER

xxx

Any **ship-to-ship (STS) operation** to take place in accordance with OCIMF STS transfer guide and charterers to provide and pay for suitable fenders and other STS equipment. All time from arrival at port or place for STS operation until final disconnection of cargo hoses and all STS equipment has been removed from the vessel, shall count as laytime or demurrage if on demurrage irrespective of weather conditions, I.E. no. 6 hours NOR time to apply. Place and equipment always subject to Master's approval, which however not to be unreasonable withheld. Any STS shall be at the expense, risk and peril of the charterers. xxx

In the event of STS operation, transfer must not take place unless Owners have pre-approved operation based on the following information from charterers

- a. Position of the STS operation.
- b. Water depth at the STS site.
- c. Drafts of both vessels before and after the operation.
- d. Product to be transferred and quantity

⁷⁹ CTA Docket, p. 1397.

⁸⁰ CTA Docket, p. 1398.



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- e. Flag of the lightering vessel, size, tonnage, Classification Society, and nationality of crew.
- f. Confirmation that type and number of fenders is in compliance with ICS' Ship to Ship Transfer Guide
- g. Confirmation that hoses are pressure tested and that size and length are in compliance with ICS's Ship to Ship Transfer Guide

Confirmation that the operation in all respect will be in compliance with local rules and regulations as set out by Maritime Authorities.⁸¹

9. DOCUMENTATION

9.1 Owners undertake that for the duration of this Charter the Vessel shall have on board or obtain in due course all such valid documentation as may, from time to time, enable the Vessel to enter, carry out all required operations at, and leave, without let or hindrance, all ports to which the Vessel may be directed under the terms of this Charter xxx.⁸²

xxx

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13. CLOSED CARGO OPERATIONS

13.1 Owners undertake that the Vessel complies with, and shall be operated for the duration of this Charter in accordance with, the recommendations regarding closed loading and closed discharging operations as set out in the 1996 Edition of ISGOTT as amended from time to time.⁸³

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19. PART A. LOADING AND DISCHARGING OF CARGO

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19.2 The cargo shall be pumped into the Vessel at the expense and risks of Charterers and pumped out of the Vessel at the expense and risk of Owners, in each case only as far as the Vessel's manifold.

Owners shall, if requested, make available the personnel, equipment and facilities on board the Vessel which are required for the connection and disconnection of hoses for loading and discharging.

⁸¹ CTA Docket, pp. 1400-1402.

⁸² CTA Docket, p. 1403.

⁸³ CTA Docket, p. 1404.



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Any delay resulting from the failure by Owners to provide such personnel, equipment and facilities shall not count as laytime or, if the Vessel is on demurrage, as demurrage. **The master may require shore supervision of, and approval for, the connection and disconnection of hoses.**⁸⁴

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**22. REVISED CHARTERER'S VOYAGE ORDERS FOR
LOADING OR DISCHARGE PORTS**

22.1 If at any time after the date of this Charter, Charterers, notwithstanding that they may have nominated a loading or discharge port, wish to issue revised Charterers' Voyage Orders and instruct Owners to stop and/or divert the Vessel to an alternative port within any Ranges stated in Section E and F of PART 1, or cause her to await orders at one or more locations, Owners shall issue such revised instructions to the Master as are necessary to give effect to such revised Charterers' Voyage Order and the Master shall comply with such revised instructions as soon as the Vessel is free of any previous charter commitments.⁸⁵

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**23. VESSEL/CARGO INSPECTIONS/BUNKER
SURVEYS**

23.1 Charterers shall be entitled to cause their representative (which term includes any independent surveyor appointed by Charterers) to carry out inspections of the Vessel and/or observe cargo operations and/or ascertain the quantity and quality of the cargo, water and residues on board, including the taking of cargo samples, inspection and copying of the Vessel's logs, documents and records (which shall include the personal notes of the crew, the rough log book and computer generated data) at any loading and/or discharge port. Charterers' representative may also conduct any of the aforementioned operations at or of any other port to which Charterers may require the Master to divert the Vessel at any time after leaving any loading port. Charterers shall obtain the consent of the owners of any cargo on board at the time before requiring the Vessel to be diverted.

⁸⁴ CTA Docket, pp. 1408-1409.

⁸⁵ CTA Docket, p. 1413.



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Charterers' representative shall be entitled to survey, and take samples from, any or all of the Vessel's cargo tanks, bunker fuel tanks and non-cargo spaces at any place referred to above.⁸⁶

xxx

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24. MAINTENANCE OF CARGO TEMPERATURE

Charterers shall have the right to instruct Owners to maintain the loaded temperature of the cargo up to a maximum of 60°C/57C/135 F. Owners undertake that the Vessel is capable of maintaining the cargo temperature up to 60° 57C/135 F throughout the laden voyage and discharge of the cargo and that the Master shall advise Charterers, daily at noon local time, of the temperature of such cargo in each of the Vessel's tanks. If the Vessel fails to maintain the required temperature Owners shall be responsible for any resulting direct loss, damage, cost or expense incurred by Charterers (including, without limitation, any requirement that the Vessel must vacate the berth) and any direct time lost thereby shall not count as laytime or, if the Vessel is on demurrage, as demurrage.⁸⁷

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25. CARGO HEATING

Charterers shall have the right to instruct Owners to raise the temperature of the cargo above the loaded temperature up to a maximum temperature of 60°C/57C/135F in each of the Vessel's cargo tanks provided always that the length of the voyage is such as to permit the temperature rise required. xxx⁸⁸

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27. TRAFFIC SEPARATION AND ROUTEING

Owners shall instruct the Master to observe regulations and recommendations as to traffic separation and routeing as issued, from time to time, by responsible organizations or regulating authorities including, but not limited to, the IMO, the UK Chamber of Shipping (or equivalent), or as promulgated by the State of the flag of the Vessel or the State in which management of the Vessel is exercised.⁸⁹

⁸⁶ CTA Docket, p. 1414.

⁸⁷ CTA Docket, p. 1415.

⁸⁸ CTA Docket, p. 1415.

⁸⁹ CTA Docket, p. 1416.

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28. ICE ON VOYAGE AND ICE AT LOADING OR
DISCHARGE PORTS

28.1 If on passage to the loading or discharge port the **Master** finds that the port is inaccessible owing to ice he **shall immediately request Charterers by telex to revise Charterers' Voyage Orders** and pending a response from Charterers the Vessel shall remain outside the area of ice-bound water. Any time lost awaiting such revised Charterers' Voyage Orders shall count as laytime or, if the Vessel is on demurrage, as demurrage.⁹⁰

28.2 Upon receipt of such request Charterers shall **instruct Owners to order the Vessel to proceed to an alternative ice-free and accessible port within the Ranges** stated in Sections E and F of PART 1 and where there are facilities for loading or discharging the cargo, as the case may be. In this event freight shall be paid at the rate applicable under this Charter to such alternative loading or discharge port. **Any additional period by which the steaming time taken to reach the alternative port exceeds the time that should have been taken had the Vessel proceeded to such port directly shall count as laytime or, if the Vessel is on demurrage, as demurrage.** Such additional period shall be the time required for the Vessel to steam the additional distance at the average speed actually achieved by the Vessel during the voyage or the Charter Speed as stated in Section B-25 of PART 1, whichever is the higher lower. Charterers shall pay Owners for additional bunkers consumed for steaming the additional distance plus any potential bunkers spend heating the cargo during such deviation at the price paid by Owners, net of all discounts or rebates, for the last bunkers lifted.⁹¹

28.3 If, on or after the Vessel's arrival at the loading or discharge port, there is a danger of her being frozen in, the Vessel shall proceed to the nearest safe and ice-free position and at the same time the **Master shall request Charterers by telex to revise Charterers' Voyage Orders.** Upon receipt of such request Charterers shall instruct Owners to order the Vessel either to proceed to an alternative ice-free and accessible port, within the Ranges stated in Sections E and F of PART 1, where there is no danger of the Vessel being frozen in and where there are facilities for loading or discharging cargo, or to return to

⁹⁰ CTA Docket, p. 1416.

⁹¹ CTA Docket, pp. 1416-1417.



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and load or discharge at the port originally nominated, or to remain at the safe and ice-free position to await orders. **If the Vessel is ordered to such an alternative port the sums to be paid by Charterers to Owners in respect of freight, additional steaming time and additional bunkers shall be calculated and compensated in accordance with the provisions of Clause 28.2**, but if Charterers instruct Owners to load or discharge the Vessel at the port originally nominated, then, subject to Clauses 7, 8, 17, 18 and 19 the whole of the time from the receipt- of NOR to load or discharge on the Vessel's first arrival at the port originally nominated until the cargo hoses have been disconnected after the completion of loading or discharging shall count as laytime or, if the Vessel is on demurrage, as demurrage. Any delay caused by ice at the port originally nominated after the final disconnection of the cargo hoses shall count as laytime or, if the Vessel is on demurrage, as demurrage.

If Charterers instruct Owners to order the Vessel to remain at the safe and ice-free position and await orders then any time lost awaiting orders shall count as laytime or, if the Vessel is on demurrage, as demurrage. Vessel not to trade in ice or follow ice breakers unless otherwise agreed during negotiations.⁹²

29. QUARANTINE

If Charterers require the Vessel to proceed to any port at which, at the time when the Vessel is ordered to that port, there is quarantine then time spent or lost whilst the Vessel is detained due to such quarantine shall count as laytime or, if the Vessel is on demurrage, as demurrage. However, if quarantine is subsequently declared whilst the Vessel is on passage to such port Charterers shall ~~not be liable for any delay caused by such quarantine.~~ Charterers and owners shall split the cost/any delay 50/50.⁹³

In Captain Jerry Olores Judicial Affidavit,⁹⁴ he stated that he received instructions *via* email at 1005H GMT of 12 December 2016 from petitioner's commercial manager, ST Shipping, revising the first discharge port to SL Limay, and followed by second discharge port in Tagoloan; and that he received another instruction through email at 0843H GMT of 13 December 2016 from ST Shipping

⁹² CTA Docket, p. 1417.

⁹³ CTA Docket, p. 1417.

⁹⁴ Exhibit P-4; CTA Docket, pp. 1166-1174.



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instructing full discharge at SL Limay, Bataan. Captain Olores also mentioned, during cross-examination in the 4 April 2017 hearing, his duties and responsibilities as captain, namely: he has full command and authority of the vessel; he has direct contact with operators during emergencies; he is the safe keeper of the cargo and can designate personnel; and he is the overall commander of the vessel.⁹⁵

From the foregoing, it appears that the charter party involved in this case is "Voyage Charter" as the agreement is limited to the ship only. The captain, crew, equipment and facilities on board the vessel remain under the control of the shipowner, and not by the charterer as shown in Clause 19 of the Voyage Charter Party. The shipowner, and not the charterer, has the authority to instruct the Master to observe regulations and recommendations as to traffic separation and routeing as shown in Clause 27. The transfer of cargo by way of ship-to-ship operation requires pre-approval of the owner as provided in Clause 8. The charterer has the right to instruct the owner to maintain the loaded temperature and to raise the temperature of the cargo as provided in Clauses 24 and 25, thereby showing that it has no direct control and supervision over the personnel of the vessel. (Additional underscoring supplied)

In their *Ad Cautelam* Memorandum, respondents argue that petitioner is not exempt from seizure under the CMTA as they insist on the following:

- (i) Petitioner was acting as private carrier *pro hac vice* or for the particular voyage subject of this case, and that the number of previous trips taken by petitioner for Sea World's clients, its commercial/financial reputation, and its registration with the POEA are irrelevant in making this determination, thus, it may be seized for merely carrying or holding on board smuggled goods under Section 1113(a) of the CMTA which exempts only common carriers;
- (ii) The effective control over the crew was given to the charterer, Glencore, which transformed petitioner into a virtual bareboat or demise charter;
- (iii) Pursuant to Clauses 3.1, 5.1, 5.2, 5.3, 19.2, 22.1, 23.5 and the Virtual Arrival Clause, the charter party between Glencore and ST Shipping is replete with provisions giving effective control of the voyage of MT Alpine Magnolia to the charterer;
- (iv) Clause 19 is actually an obligation on the part of ST Shipping for the benefit of Glencore to make sure that the personnel, equipment and facilities on board the vessel are available for the loading and discharging of cargo, the personnel, equipment and facilities are at Glencore's disposal, and any delay caused by ST Shipping's failure to comply with such obligation will not prejudice Glencore;

⁹⁵ April 4, 2017 TSN, p. 90.



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(v) Clauses 24, 25 and 27 are responsibilities that ST Shipping must fulfill in Glencore's favor, and even if the rights under these sections are implemented through ST Shipping, ST Shipping does not have the right to contravene the instructions of Glencore if they are exercised within the parameters stated;

(vi) The discretion for ship-to-ship transfer operation under Clause 8 remains with Glencore, and ST Shipping cannot contravene Glencore's decision to conduct such operation, if conditions are met, and the operation is in compliance with local rules and regulations of the relevant maritime authorities;

(vii) Anent the emails containing the revised discharge port instructions from ST Shipping, the Court failed to consider Clause 22.1 showing that ST Shipping merely implement Glencore's instruction by relaying them to the ship's master, and it is Glencore that still determines when voyage orders are revised; and

(viii) The contract between the charterer, Glencore and the consignee, SL Harbor, provides that seller warrants that the vessel is owned or demise chartered throughout the entire period of the voyage to the discharge terminal(s) by a member of the International Tankers Owners Pollution Federation Limited (ITOPF).

The Court examined the pertinent provisions of the Voyage Charter Party between ST Shipping and Glencore which were being relied upon by respondents in insisting that petitioner was a private carrier, particularly Clauses 3, 5, 19, 22, 23, 24, 25, 27, including their sub-clauses. The Court quotes hereunder the clauses and sub-clauses cited by respondents, save for those which have already been quoted in the Court's Resolution dated August 4, 2017:

**3. LOADING/COMPLIANCE WITH CHARTERERS'
VOYAGE ORDERS**

3.1 Subject to the provisions of this Charter the Vessel shall proceed to the loading port (the term "port" include any port, berth, dock, loading or discharging anchorage or offshore location, submarine line, single point or single buoy mooring facility, alongside vessels or lighters, or any other place whatsoever as the contest requires) stated in Section E of PART 1, or to such other port (always within the Ranges stated in Section E of PART 1) as is separately or subsequently **identified in Charterers' Voyage Orders** (which term shall mean any written instruction issued by Charterers in respect of the Vessel at any time during the period of this Charter, including any amendments, corrections or revisions thereto), **or so near thereto as she may safely reach and there load**



the cargo stated in Sections C and D of PART 1 **subject to any clarification of cargo loading instructions as may be provided in Charterers' Voyage Orders.**⁹⁶

xxx xxx xxx

5. LOADING AND DISCHARGE PORT/SHIFTING

xxx xxx xxx

5.2.1 unmooring at, and pilotage and towage off, the first loading or discharge berth;

5.2.2 mooring and unmooring at, and pilotage and towage on to and off, any intermediate loading or discharge berth; and

5.2.3 mooring at, and pilotage and towage on to, the last loading or discharge berth

Charterers shall reimburse Owners in respect of expenses properly incurred, arising from any of the aforementioned movements, upon presentation by Owners of all available supporting invoices evidencing prior payment by Owners as invoice by owners hub agent (presently Inchcape Shipping Services).

xxx xxx xxx

23. VESSEL/CARGO INSPECTIONS/BUNKER SURVEYS

xxx xxx xxx

25. CARGO HEATING

Charterers shall have the right to instruct Owners to raise the temperature of the cargo above the loaded temperature up to a maximum temperature of 60°C 57C/135F in each of the Vessel's cargo tanks provided always that the length of the voyage is such as to permit the temperature rise required. In such case the Master shall advise Charterers daily, at noon local time, of the temperature of the cargo in each of the Vessel's tanks.

Charterers shall reimburse Owners for the cost of additional bunkers consumed to raise the temperature of the cargo as aforesaid. The quantity of bunkers so consumed shall be calculated in accordance

⁹⁶ CTA Docket, pp. 1394-1395.



XXX

XXX

Upon arrival at the discharge port a theoretical consumption will be calculated in order to ascertain the bunkers saved due to charterer's instruction to slow steam. This is calculated basis charter party speed's consumption, WNI weather information, and wave and speed projections, and must be mutually agreed. At the discharge port owners are to present their bunker consumption records basis the actual voyage performed. Any bunker cost savings basis the theoretical vessel consumption for the voyage and the actual are to be split

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50/50 between owner and charterer. All calculations are to be basis last bunkers purchased invoice, but if multiple grades of bunkers have been consumed, the lowest price is to apply for the calculation.

Any savings due to the charterer are to be deducted from demurrage or claimed from owner. Any costs for WNI are for charterer's account.⁹⁸

After a painstaking and judicious evaluation of the foregoing provisions of the Voyage Charter Party, the Court sustains its earlier conclusion that petitioner was a common carrier under Voyage Charter at the time the incident happened. To emphasize, there is nothing in the Voyage Charter Party that shows relinquishment of possession, command and navigation of MT Alpine Magnolia in favor of Glencore; neither is there any provision that the charter includes not only the ship but the crew as well that could have transformed the vessel into a "private or special charter" within the context of *Planters Products, Inc., supra*. At most, the Voyage Charter Party provides that the shipowner, if requested, makes available the personnel, equipment and facilities on board the vessel that are required for the connection and disconnection of hoses for loading and discharging - - an activity that is of miniscule or limited impact to the entire control and operation of the vessel or the pursuit of the voyage. Otherwise stated, the Master and Crew of MT Alpine Magnolia remains subject to the direct control and supervision of petitioner, and not of the charterer.

Respondents argue that the mere fact that the personnel, equipment and facilities are at Glencore's disposal, that ST Shipping does not have the right to contravene the instructions of Glencore relating to its responsibilities under Clauses 24, 25 and 27, and that the discretion for ship-to-ship transfer operation under Clause 8 is lodged with Glencore, are sufficient to prove that petitioner is not a common carrier. The Court finds respondents' arguments untenable.

The teaching in ***Abad vs. Goldloop Properties, Inc.***,⁹⁹ is instructive:

The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: [i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. This provision is akin to the plain meaning rule applied by Pennsylvania courts, which assumes that the intent of the parties to

⁹⁸ CTA Docket, p. 1584.

⁹⁹ G.R. No. 168108, April 13, 2007.



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an instrument is embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement. It also resembles the four corners rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. **The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law.** If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence. (Boldfacing supplied)

To be sure, whatever right or authority the charterer has with respect to the operation of the vessel or to the conduct of the voyage is limited to making requests to the owner on specific aspects after everything else is taken into consideration, what remains patent is that the charterer is not vested with direct authority or control over the Master of the vessel or its crew. Yet, the owner retains ultimate discretion on whether to comply or not with the requests or instruction of the charterer. Interestingly, even with respect to ship to ship transfer operation under Clause 8, the activity may not be undertaken *sans* pre-approved operation by the owner (and not by the charterer). Not only that. If the charterer has full control of the vessel and its crew, then why is it that the expense and risk in cargo pump out from the vessel has been lodged with the owner? Indeed, the foregoing circumstances confirm that control over the vessel stays with its owner.

Respondents also cite the provision of the contract between Glencore and SL Harbor which provides for a seller's warranty that the vessel is owned or demise chartered throughout the entire period of the voyage to the discharge terminal(s) by a member of the International Tanker Owners Pollution Federation Limited (ITOPF). But the Court notes that **petitioner was not privy thereto** and needless to say, the nature of the agreement between ST Shipping and Glencore is determined by the language of their own Voyage Charter Party and not from a separate and independent contract between Glencore and SL Harbor.

There being no relinquishment of possession, command and navigation of MT Alpine Magnolia in favor of Glencore, as the Master/Captain, Crew, equipment and facilities of the vessel remain



under the control of the shipowner, and not by the charterer, the Court finds no cogent reason to reverse its earlier finding that petitioner was a common carrier under a Voyage Charter Party at the time of the incident.

A common carrier is not subject to forfeiture while vehicle, vessel or aircraft (other than common carrier) is subject to forfeiture only if its owner or agent has knowledge of, or participation in the unlawful act

In identifying the property that may be the subject of forfeiture, CMTA provides:

Section 1113. *Property Subject to Seizure and Forfeiture.*—
Property that shall be subject to seizure and forfeiture include:

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

xxx xxx xxx

(k) Any conveyance actually used for the transport of goods subject to forfeiture under this Act, with its equipage or trappings, and any vehicle similarly used, together with its equipment and appurtenances. The mere conveyance of smuggled goods by such transport vehicle shall be sufficient cause for the outright seizure and confiscation of such transport vehicle but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or that the agent in charge thereof at the time, has no knowledge of the unlawful act; and

xxx xxx xxx

SECTION 1114. Properties not Subject to Forfeiture in the Absence of *Prima Facie* Evidence. — The forfeiture of the vehicle, vessel, or aircraft shall not be effected if it is established that the owner thereof or the agent in charge of the means of conveyance used as aforesaid has no knowledge of or participation in the unlawful act: *Provided*, That a *prima facie* presumption shall exist against the vehicle, vessel, or aircraft under any of the following circumstances:



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- (a) If the conveyance has been used for smuggling before;
- (b) If the owner is not in the business for which the conveyance is generally used; and
- (c) If the owner is not financially in a position to own such conveyance.

Respondents argue that petitioner would not be exempt from forfeiture based on the first part of Section 1113 (a) of the CMTA which states that “[a]ny vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of goods or in conveying or transporting smuggled goods in commercial quantities into or from any Philippine port or place”. Allegedly, while ship is merely exempted from automatic forfeiture, it is nonetheless burdened to prove its non-involvement in the illegal importation/exportation or smuggling. This burden, petitioner purportedly failed to discharge. Respondents further posit that petitioner failed to prove its lack of participation in the unlawful act.

The Court finds respondents’ contentions bereft of merit.

In ***Philippine International Trading Corporation vs. Commission on Audit***,¹⁰⁰ the Supreme Court laid down the following rules in construing a statute, viz.:

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. **The statute’s clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.** Consistent with the fundamentals of statutory construction, **all the words in the statute must be taken into consideration in order to ascertain its meaning.** (Emphasis supplied)

Based on the foregoing, all the words and phrases in Sections 1113 (a) and (k) and Section 1114 of the CMTA must be considered together in order to ascertain their meaning.

¹⁰⁰ G.R. No. 183517, June 22, 2010.



In essence, Section 1113 (a) and (k) of the CMTA clearly states a rule that a vehicle, vessel or aircraft, including its cargo, used unlawfully in the importation or exportation of goods or in conveying or transporting smuggled goods in commercial quantities into or from any Philippine port or place may be subjected to seizure, detention and forfeiture. By way of exception, forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or that the agent in charge thereof at the time, has no knowledge of the unlawful act.

On the other hand, Section 1114 of the CMTA provides that forfeiture of vehicle, vessel or aircraft shall not be effected if it is established that the owner or the agent in charge thereof has no knowledge of or participation in the unlawful act. Forfeiture would be effected if there is *prima facie* evidence against the vessel.

After weighing the evidence presented by petitioner *vis-à-vis* that of respondents, the Court holds that the forfeiture of MT Alpine Magnolia should not have been effected as the preponderant evidence clearly established that MT Alpine Magnolia was a common carrier under Voyage Charter at the time of the incident happened and that petitioner had no knowledge or participation in the unlawful activity/smuggling activity/loop loading, if there was indeed any. As elucidated by the Court in its Resolution dated August 4, 2017, the *prima facie* presumption of unlawful act under Section 1114 of the CMTA does not exist. **First**, there is no evidence showing that petitioner has been used for smuggling before the present controversy occurred. **Second**, the owner and its operators/managers are in the business of carriage of goods/cargo for a fee, for which petitioner-vessel is generally used. **Third**, there is also no showing that the owner is not financially in a position to own the vessel.

MT Alpine Magnolia's owner/agent has no knowledge or participation in the alleged smuggling/loop loading

On the matter of whether or not petitioner's owner/agent has knowledge or participation in smuggling/loop loading, the Court summarized the testimonies of the parties' witnesses in the Resolution dated August 4, 2017 and found that loop loading was not clearly established by respondents, to quote:



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1. Testimony of [petitioner's witness] **Captain Jerry Olores**
during the April 4, 2017 hearing:

He testified that he is not aware of loop loading of cargo; that his concern is on the safety of the vessel and crew, and they are only up to the hose connection;¹⁰¹ that loop loading can be loading using a tank or using a direct line, depending on how the terminal does it;¹⁰² that loop loading does not use any pumps from the other side;¹⁰³ it is the terminal which has much knowledge about loop loading;¹⁰⁴ they do not do loop loading and he just loaded the cargo by their line;¹⁰⁵ and that loop loading can be done from one tank to another.¹⁰⁶

2. Testimony of [petitioner's witness] **Mr. Nelson A. Romero**
during the April 4, 2017 hearing:

He testified that he explained to the BOC on board that [loop loading] is impossible with petitioner, and he testified on that before the BOC;¹⁰⁷ that he event told the Deputy Collector to correct his impression that there is such operation.¹⁰⁸

3. Judicial Affidavit¹⁰⁹ of [respondent's witness] **Mr. Gulliber T. Cawaling** and his testimony during the May 11, 2017 hearing:

In his Judicial Affidavit, he states that loop loading happens when a ship is unloading to storage tank, at the same time, to another ship; that there was loop loading between MT Malolos and petitioner; that he became aware of the loop loading at around 1715 upon advice of certain Mr. Limpahan, SL Gas Terminal Supervisor or terminal representative, which information was recorded in his Statement of Facts; that he identified page 52 of the logbook of MT Malolos indicating the date 15 December 2016 (Annex R-4-2), and his signature on the lower right of the logbook over the designation "Chief Mate". The entry in the logbook at 1840H reads "Commenced Loading of IFO Product (Loop Loading w) MT Alpine Magnolia; that in making the entries in the Statement of Facts and logbook, he knew that MT Malolos would supposedly be loop loading with MT Alpine Magnolia since they passed by MT Alpine Magnolia when they entered the port and Mr. Limpahan named MT Alpine Magnolia specifically; and that he said that

¹⁰¹ April 4, 2017 TSN, p. 95.

¹⁰² April 4, 2017 TSN, p. 100.

¹⁰³ April 4, 2017 TSN, p. 100.

¹⁰⁴ April 4, 2017 TSN, p. 101.

¹⁰⁵ April 4, 2017 TSN, p. 101.

¹⁰⁶ April 4, 2017 TSN, p. 102.

¹⁰⁷ April 4, 2017 TSN, p. 78.

¹⁰⁸ April 4, 2017 TSN, p. 79.

¹⁰⁹ Judicial Affidavit (English version) marked as Exhibit R-4-a; Judicial Affidavit (Tagalog version) marked as Exhibit R-4-b.



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there was no other ship in the port at the time he made those entries.

During the May 11, 2017 hearing, he said that loop loading is *loading with another line together with MT Malolos; they load from storage tank and then, maybe, some line are used;*¹¹⁰ *that in loop loading, the ship loading with another line is open;*¹¹¹ *that another line means to another tank, not only to MT Malolos; referring to tank that is not MT Malolos;*¹¹² *that there is no direct tagalog translation of loop loading.*¹¹³

During clarification, he agrees, however, that it is possible to use the word loop loading between the tank in SL Harbor and MT Malolos,¹¹⁴ and loop loading between MT Malolos and the tank in SL Harbor.¹¹⁵

4. The Judicial Affidavit¹¹⁶ of [respondents' witness] **Mr. Silvestre L. Martinez**, an Intelligence Officer of the BOC, and his testimony during the May 11, 2017 hearing:

He stated in his Judicial Affidavit that his recommendation to issue WSD over MT Alpine Magnolia and its cargo is based on its documentation, particularly to a Cargo Outturn Certificate dated 15 December 2016 issued by the Terminal Depot Manager for SL Limay Terminal, EV Estanislao indicating that a vessel named MT Malolos had received 962.003 M/T of fuel oil through "loop loading" or ship to ship transfer from MT Alpine Magnolia at approximately 8:30 in the evening. The upper right of the Cargo Outturn Certificate indicates that the source tank from which the fuel oil was sourced is the "MT Alpine Magnolia v.060 (Loop Loading)". He identified the Cargo Outturn Certificate which is marked as Annex R-2-6". He also identified the Memorandum dated 16 December 2016 (marked as Annex R-2-7) which embodies his recommendation to issue a WSD over MT Alpine Magnolia.

During the May 11, 2017 hearing, he said that there was loop loading/ship to ship transfer from MT Alpine to another vessel,¹¹⁷ and the basis is the document denominated as a Cargo Outturn Certificate dated 15 December 2016 issued by SL;¹¹⁸ that SL Harbor is the importer of the subject shipment;¹¹⁹

¹¹⁰ May 11, 2017 TSN, p. 38.

¹¹¹ May 11, 2017 TSN, p. 39.

¹¹² May 11, 2017 TSN, p. 39.

¹¹³ May 11, 2017 TSN, p. 41.

¹¹⁴ May 11, 2017 TSN, p. 44.

¹¹⁵ May 11, 2017 TSN, p. 45.

¹¹⁶ Judicial Affidavit marked as Exhibit R-2.

¹¹⁷ May 11, 2017 TSN, p. 86.

¹¹⁸ May 11, 2017 TSN, p. 87.

¹¹⁹ May 11, 2017 TSN, p. 87.



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that loop loading was written by SL Harbor, not by Customs;¹²⁰
and that loop loading is also proved by a Coasting Manifest.¹²¹

He agrees, however, that Cargo Outturn Certificate was prepared exclusively by SL, and not by MT Alpine;¹²² and that the Coasting Manifest was also prepared, executed solely by an officer of MT Malolos, and the same was not signed by the captain of petitioner or its agent.¹²³

He further said that the captain of the vessel has the responsibility and duty to supervise the unloading of the cargo;¹²⁴ that it is not the responsibility of the captain to check the valves connecting the tubes/hose but it is the function of the deck officer.¹²⁵ He agreed that the shipmate does not have any knowledge or details as to where the unloading of the cargo should be made and the shipmate will only open the valve for the purpose of unloading.¹²⁶ He said that the details will be at the terminal and when the vessel reaches the terminal, it is the personnel of terminal who will be the one directing what is to be done;¹²⁷ and that it is the terminal who will determine where to place the cargo.¹²⁸ He also agreed that when the vessel arrives, the captain will just declare that the unloading could be done, but as to where the cargo would be placed, that is beyond the knowledge of the captain.¹²⁹

5. Judicial Affidavit of [respondents' witness] **Mr. Julius B. Premediles**, the District Collector of Customs of the Port of Limay, Bataan, and his testimony during the April 25, 2017 hearing:

In his Judicial Affidavit, he said that MT Alpine Magnolia was involved in the smuggling of fuel oil. MT Alpine Magnolia effected "loop loading" or a ship to ship transfer of fuel oil to another vessel, the MT Malolos, without informing the BOC and without paying the required duties and taxes; and he said that SL Harbor, who appeared as claimant, never categorically denied the loop loading with MT Malolos and was unable to give a satisfactory explanation for it.

During the April 25, 2017 hearing, he said that Cargo Outturn Certificate corroborates the Report of Herma Shipping that there is a loop loading from MT Alpine.¹³⁰ He confirmed that

¹²⁰ May 11, 2017 TSN, p. 90.

¹²¹ May 11, 2017 TSN, p. 91.

¹²² May 11, 2017 TSN, pp. 87, 88 & 90.

¹²³ May 11, 2017 TSN, pp. 94, 95, 96.

¹²⁴ May 11, 2017 TSN, p. 120.

¹²⁵ May 11, 2017 TSN, p. 121.

¹²⁶ May 11, 2017 TSN, p. 121-122.

¹²⁷ May 11, 2017 TSN, p. 122.

¹²⁸ May 11, 2017 TSN, p. 123.

¹²⁹ May 11, 2017 TSN, pp. 122-123.

¹³⁰ April 25, 2017 TSN, p. 65.



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the Cargo Outturn Certificate (R-1-6), Statement of Facts (R-1-9) and Coasting Manifest (R-1-10) are the documentary evidence considered to prove loop loading.¹³¹ He said that he cannot confirm that MT Alpine has no participation in the preparation or submission of these documents (R-1-6, R-1-9 & R-1-10),¹³² but confirmed that there is no signature of MT Alpine or its representative in those documents.¹³³

He agreed that there was an information he received that there was loop loading from MT Alpine to MT Malolos;¹³⁴ that his people were able to confirm about loop loading as they investigated and recommended to him *[through]* official report".¹³⁵

He said that actual loop loading is not seen, and it was only based on report, documentary evidence and on intelligence gathering;¹³⁶ that BOC people confirms loop loading an hour after boarding formalities (in the evening of December 15);¹³⁷ that BOC did not see the loop loading because MT Alpine Magnolia and MT Malolos are kilometers far from each other;¹³⁸ he gathered his Intelligence Report from CIIS;¹³⁹ when he ordered the suspension of the unloading of fuel, there was no longer loop loading because MT Malolos was already in Navotas;¹⁴⁰ and that what was suspended is not the loop loading but the unloading by MT Alpine Magnolia of fuel to the tank of SL HBTC.¹⁴¹

He further said that loop loading can be authorized as long as the taxes and duties are already paid that is when there is advance payment;¹⁴²

He agreed/confirmed that there was no permit to conduct a loop loading in this case;¹⁴³ and that BOC cannot possibly see or validate the fact of loop loading because that is a very technical operations;¹⁴⁴ that huge pipe under the water is being used for loop loading;¹⁴⁵ that he actually inquired from technical people (from CIIS and the anti-smuggling

¹³¹ April 25, 2017 TSN, pp. 69-70.

¹³² April 25, 2017 TSN, p. 70.

¹³³ April 25, 2017 TSN, p. 70.

¹³⁴ April 25, 2017 TSN, p. 109.

¹³⁵ April 25, 2017 TSN, p. 109.

¹³⁶ April 25, 2017 TSN, p. 110.

¹³⁷ April 25, 2017 TSN, p. 110.

¹³⁸ April 25, 2017 TSN, p. 111-112.

¹³⁹ April 25, 2017 TSN, p. 112.

¹⁴⁰ April 25, 2017 TSN, p. 113.

¹⁴¹ April 25, 2017 TSN, p. 113.

¹⁴² April 25, 2017 TSN, p. 118.

¹⁴³ April 25, 2017 TSN, p. 118.

¹⁴⁴ April 25, 2017 TSN, p. 118.

¹⁴⁵ April 25, 2017 TSN, p. 119.



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enforcement group) the possibility to conduct loop loading two (2) kilometers away from one vessel to another.¹⁴⁶ He said that they have no capability to inspect the under water facilities.¹⁴⁷ He agreed that he is proceeding on the assumptions of report without actual validation on whether there was this facility for loop loading, no actual validation of staff/BOC personnel of the actual act of loop loading and none of the personnel have actually seen the facility being used for loop loading. He is actually making a conclusion based on mere reports.¹⁴⁸

He insisted that there was loop loading because there is actual releasing of fuel in the market through MT Malolos;¹⁴⁹ and that the documents covering their activities show that these fuels were taken MT Alpine Magnolia.¹⁵⁰ He cannot ascertain, however, whether the ship captain knew that there was loop loading going on.¹⁵¹ He confirmed loop loading based purely on documents.¹⁵² He discounted the possibility that MT Green Point arrives somewhere in the country, and that there was loop loading with MT Malolos¹⁵³ He maintained that loop loading from MT Magnolia to MT Malolos was confirmed by SL Harbor, and was stated in the PPA records of Herma Shipping¹⁵⁴

He, however, said that in this case, there was a discharge of fuel at the tank of SL HBTC.¹⁵⁵

6. Testimony of [respondents' witness] **Ms. Ibañez** [Chief of Staff of the District Collector of Customs of Limay, Bataan; acting Customs Examiner; acting Customs Inspector; and acting Disbursement Officer for the District Port of Limay] during the May 11, 2017 hearing:

In response to the questions sought to be clarified by this Court, she said that she has no personal knowledge/information regarding loop loading or ship to ship transfer of cargo on that time;¹⁵⁶ that when she arrived at SL Harbor, she saw MT Alpine actually docked in the port;¹⁵⁷ that she boarded the vessel when she arrived, and she did not see

¹⁴⁶ April 25, 2017 TSN, p. 120-121.

¹⁴⁷ April 25, 2017 TSN, p. 121.

¹⁴⁸ April 25, 2017 TSN, pp. 121-122.

¹⁴⁹ April 25, 2017 TSN, p. 122.

¹⁵⁰ April 25, 2017 TSN, p. 123.

¹⁵¹ April 25, 2017 TSN, p. 131-132.

¹⁵² April 25, 2017 TSN, p. 133.

¹⁵³ April 25, 2017 TSN, p. 145.

¹⁵⁴ April 25, 2017 TSN, p. 145.

¹⁵⁵ April 25, 2017 TSN, p. 135.

¹⁵⁶ May 11, 2017 TSN, p. 135.

¹⁵⁷ May 11, 2017 TSN, p. 135.

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MT Malolos at that time.¹⁵⁸ She confirmed that there was no obstruction to the view when she boarded MT Alpine, so much so that if MT Malolos was there, she would have seen it;¹⁵⁹ and that **when she arrived at SL Harbor Office, MT Alpine Magnolia cargo has already been discharged partially;¹⁶⁰ and that the cargo was discharged at SL Harbor Tank "L" based on her personal knowledge.¹⁶¹**

Based on the testimonies of the witnesses of the parties, it appears that petitioner and its agent have no knowledge of the alleged loop loading. Also, loop loading was not clearly established by respondents. Stated differently, there is doubt as to the existence of loop loading based on the testimonies of respondents' witnesses.

Considering that petitioner and its captain appear to have no knowledge of, or participation in, the alleged smuggling activity or loop loading; and considering further than the requirements for the application of the prima facie presumption under Section 1114 of the CMTA are not present in this case, forfeiture of petitioner may not have warranted. (*Emphasis supplied*)

Respondents assert that loop loading took place and claim that petitioner has utterly failed to explain the following:

1. The Cargo Outturn Certificate dated 15 December 2016 issued by a certain EV Estanislao, Terminal Depot Manager of SL Limay, Bataan clearly stating that 962.003 M/T of IFO (Industrial Fuel Oil) was transferred from the MT Alpine Magnolia to the MT Malolos via loop loading;
2. The coasting manifest of MT Malolos confirming the loading in the port of SL Gas, Limay, Bataan;
3. The Statement of Facts prepared by the Chief Mate of MT Malolos stating that MT Malolos commenced loading IFO from MT Alpine Magnolia at 1840H on 15 December 2016 and completed loading on 2030H of the same evening, the same of which were taken from the logbook of MT Malolos;
4. The errors on petitioner's documentation are substantial and may be treated as badges of fraud. Captain Olores may be considered to have consented to the submission of false and misleading documents which is another ground for forfeiture under subparagraph (l) of Section 1113 of the CMTA;

¹⁵⁸ May 11, 2017 TSN, pp. 135-136.

¹⁵⁹ May 11, 2017 TSN, pp. 136-137.

¹⁶⁰ May 11, 2017 TSN, p. 137.

¹⁶¹ May 11, 2017 TSN, pp. 137-138.



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5. The testimony of agent Martinez that he witnessed petitioner having four mooring lines and the photograph taken by the Command Center of the BOC in support thereof.

The Court is not convinced.

The Statement of Facts¹⁶² prepared by the Chief Mate of MT Malolos, which reflects the information that there was loop loading with petitioner, cannot be taken as gospel truth.

Chief Officer Gulliber T. Cawaling of MT Malolos (*a local vessel; inter-island vessel*), the one who prepared the said Statement of Facts, testified during the May 11, 2017 hearing that:

- (i) He did not talk to any of the crew of MT Alpine Magnolia before making the statement and in preparing the document;
- (ii) He did not request for any document from MT Alpine Magnolia before preparing the Statement of Facts to verify the statement;
- (iii) He did not request to be allowed to board MT Alpine Magnolia to observe the unloading procedure being carried out;
- (iv) He did not talk to any crew member of MT Alpine Magnolia to verify the contents before he made entry in the logbook (R-4-2) of MT Malolos;
- (v) He did not go on board MT Alpine Magnolia to observe what is happening during unloading before he made entries;
- (vi) He did not request for any documents from MT Alpine Magnolia to verify the entries in the logbook before he made them;
- (vii) His Statement of Facts (R-4-1) and logbook entries (R-4-2) are based entirely on what Mr. Limpahan told him.¹⁶³

Mr. Cawaling further revealed his understanding of the concept of loop loading, which according to him is **loading with another line together with MT Malolos; loading from storage tank and then, maybe, some line are used**; the ship loading with another line (that is from other tank, not only of MT Malolos).¹⁶⁴ He agreed, in response to the clarificatory question of the Court, that it is possible to use the

¹⁶² CTA Docket, p. 1878.

¹⁶³ May 11, 2017 TSN, pp. 34-36.

¹⁶⁴ May 11, 2017 TSN, pp. 38-39.



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word loop loading between the tank in SL Harbor and MT Malolos, and loop loading between MT Malolos and the tank in SL Harbor.¹⁶⁵

Evidently, the Statement of Facts, although admissible in evidence to prove its existence, is not credible to prove that there was indeed loop loading. Mr. Cawaling admitted that his Statement of Facts is based entirely on what was told to him by a certain Mr. Limpahan, who was not presented as a witness in this case. Mr. Cawaling, therefore, has no personal knowledge of the alleged loop loading. The statement contained in his Statement of Facts about loop loading can rightly be considered as hearsay. It is doctrinal that any evidence -- whether oral or documentary -- is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand. Information that is relayed to the former by the latter before it reaches the court is considered hearsay.¹⁶⁶ Hearsay evidence, whether objected to or not, has no probative value.

Moreover, even if the Court accepts the Statement of Facts of Mr. Cawaling as gospel truth, his understanding of loop loading, as stated during trial, does not confirm that the fuel allegedly loaded to MT Malolos actually came from MT Alpine Magnolia, but could have been loaded from the tank of SL Harbor.

The Coasting Manifest of MT Malolos,¹⁶⁷ which according to respondents has confirmed the loading in the port of SL Gas, Limay, Bataan, does not show that the IFO loaded came from MT Alpine Magnolia.

With respect to the Cargo Outturn Certificate¹⁶⁸ dated 15 December 2016, the same cannot be given probative value to establish the alleged loop loading. Evidence disclose that said document was exclusively prepared by SL Harbor and signed by its representative,¹⁶⁹ without any participation on the part of petitioner or its agent/personnel. Similar to the Statement of Facts, said Cargo Outturn Certificate merely proves the existence of such document, but

¹⁶⁵ May 11, 2017 TSN, pp. 44-45.

¹⁶⁶ Bayani vs. People of the Philippines, G.R. No. 155619, August 14, 2007.

¹⁶⁷ CTA Docket, p. 1879.

¹⁶⁸ CTA Docket, p. 1876.

¹⁶⁹ Testimony of Mr. Silvestre L. Martinez on May 11, 2017, TSN, pp. 87-88, 90; testimony of Julius B. Premediles, TSN, pp. 66-67.



its content cannot be given any weight since the persons who prepared/approved the same were not presented to the witness stand.

The Cargo Outturn Certificate and Statement of Facts relied upon by the respondents cannot also be given weight since a party cannot be prejudiced by an act or declaration of another. ***Res inter alios acta alteri nocere non debet.***¹⁷⁰

Even assuming further that the Court may give probative value to the said Cargo Outturn Certificate and Statement of Facts, and conclude that loop loading had transpired, forfeiture would still not be effected since there is no evidence proving that petitioner's Master and crew participated or had knowledge of the alleged loop loading.

Respondents' witness, Mr. Silvestre L. Martinez, testified that while the Captain of the vessel has the responsibility and duty to supervise the unloading of cargo, it is not the responsibility of the Captain to check the valves connecting the tubes/hose but it is the function of the deck officer.¹⁷¹ He agreed that when the vessel arrives, the Captain will just declare that the unloading could be done, but as to where the cargo would be placed, that is beyond the knowledge of the captain.¹⁷² He confirmed that the shipmate does not have any knowledge or details as to where the unloading of the cargo should be made and that the shipmate will only open the valve for the purpose of unloading.¹⁷³ He said that the details will be at the terminal, and it is the terminal who will determine where to place the cargo.¹⁷⁴

On the issue of mooring lines, respondents claim that there were only four (4) mooring lines, as testified to by their witness and as shown in the photograph taken by the Command Center of the BOC, in support also of their theory of loop loading. The theory of respondents is that the fact that four (4) mooring lines secured the vessel easily facilitated the conduct of loop loading.

Respondents' witness, Mr. Martinez, testified that petitioner was secured by only four (4) mooring lines.¹⁷⁵ He did not, however, include this allegation in his official report (i.e., December 15, 2016

¹⁷⁰ Tamargo vs. Awingan, G.R. No. 177727, January 19, 2010.

¹⁷¹ May 11, 2017 TSN, 120-121.

¹⁷² May 11, 2017 TSN, pp. 122-123.

¹⁷³ May 11, 2017 TSN, pp. 122-123.

¹⁷⁴ May 11, 2017 TSN, pp. 120-123.

¹⁷⁵ Exhibit "R-5"; CTA Docket, p. 2673-2681, 2676.



Memorandum). He made such allegation only in his Supplemental Judicial Affidavit.¹⁷⁶

The testimony of Mr. Martinez was refuted by the testimonies of petitioner's witnesses. Chiefmate Clyde E. Guzman testified that he was present all the time when the vessel was moored; that there was a BOC [representative] on board during mooring operation and no complaint was ever made as they gave the exact twelve (12) mooring lines.¹⁷⁷ He further testified that four (4) mooring lines will pose danger to the vessel or to the property of SL CBM;¹⁷⁸ and that even if there are only four (4) mooring lines, it is totally impossible for a vessel to come alongside with MT Alpine Magnolia when it comes to a buoy position.¹⁷⁹ Captain Jerry Olores testified also that the minimum mooring lines should be more than eight (8);¹⁸⁰ and that while he agreed that eight (8) mooring lines is the absolute minimum in order to secure the vessel the size of MT Alpine Magnolia, it would still depend on the weather condition of the area [taking into consideration] the safety of the vessel.¹⁸¹

The evidence of petitioner relating to the issue of mooring lines is more credible than that of respondent.

First, petitioner and its personnel enjoy the presumption that they have taken ordinary care of their concern and that they are innocent of the wrong imputed against them;¹⁸² hence, the Court is convinced that petitioner employed the exact twelve (12) mooring lines as four (4) mooring lines will pose danger to the vessel or to the property of SL CBM.

Second, Mr. Martinez's recollection is doubtful considering that he did not indicate the matters about mooring lines in his official report submitted before the BOC in order to further support his theory that a vessel the size of MT Malolos could easily approach petitioner for a ship-side transfer of cargo.¹⁸³ Thus, the presumption of regularity in the performance of official duty will not be applied as he was remiss in not stating such important information in his official report with the

¹⁷⁶ February 20, 2018 TSN, pp. 24-27.

¹⁷⁷ March 20, 2018 TSN, pp. 28-29.

¹⁷⁸ March 20, 2018 TSN, p. 28.

¹⁷⁹ March 20, 2018 TSN, p. 24-25.

¹⁸⁰ March 20, 2018 TSN, p. 46.

¹⁸¹ March 20, 2018 TSN, p. 46.

¹⁸² Sec. 3 (a) and (e), Rule 131 of the Rules of Court.

¹⁸³ Exhibit R-5, CTA Docket, pp. 2673-2679, 2676.

BOC. Interestingly, the theory of Mr. Martinez of ship-side transfer of cargo in view of the alleged four (4) mooring lines which accordingly gives extra space around MT Alpine Magnolia¹⁸⁴ is strikingly in contrast with the testimony of respondents' other witness, District Collector Julius B. Premediles, who testified that based on intelligence report, MT Alpine Magnolia and MT Malolos were situated two (2) kilometers away from each other and loop loading was conducted through "kilometers lines of pipes".¹⁸⁵ Indeed, if there was loop-loading between MT Alpine Magnolia and MT Malolos, why is there not a single picture taken to document the incident?

Third, the Master/Pilot Information Exchange,¹⁸⁶ which illustrated the mooring plan of the vessel, is more credible than the picture shown by respondents. The former was identified by Captain Olores, who likewise testified that the local pilot and the mooring master came onboard and the local pilot signed the Pilot Card in his presence.¹⁸⁷ The picture presented by respondents, however, only prove its existence but not its content since the same was not identified by the person who took it, as correctly observed by the petitioner.¹⁸⁸

Respondents claim that the errors on petitioner's documentation are substantial and may be treated as badges of fraud; and that Captain Olores may be considered to have consented to the submission of false and misleading documents which is another ground for forfeiture under subparagraph (I) of Section 1113 of the CMTA.

Respondents' contention is bereft of merit.

The Court made the following observation in the August 4, 2017 Resolution, to wit:

Mr. Julius B. Premediles stated in his Judicial Affidavit that MT Alpine Magnolia was involved in smuggling of fuel oil as it effected "loop loading" or a ship to ship transfer of fuel oil to MT Malolos without informing the BOC and **without paying the required duties and taxes.**

¹⁸⁴ Exhibit R-5, CTA Docket, pp. 2673-2679, 2676.

¹⁸⁵ April 25, 2017 TSN, p. 111-112.

¹⁸⁶ Exhibit "P-5-4"; CTA Docket, p. 3000.

¹⁸⁷ March 20, 2018 TSN, pp. 37-38, 42-43.

¹⁸⁸ Petitioner's Memorandum, CTA Docket, p. 3187.

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In the April 25, 2014 hearing, Mr. Premediles, however, testified that it is the duty of the importer to pay the required duties and taxes for import shipment, like the subject matter of this case. This is consistent with Section 405 of the CMTA which specifically provides that the liability for duties, taxes, fees, and other charges attached to importation constitutes a personal debt due and demandable against the **importer** in favor of the government.¹⁸⁹

Mr. Premediles further testified that the importer in this case is SL Harbor,¹⁹⁰ and that petitioner and its managers are not the importer;¹⁹¹ and that it is the importer's duty to submit the import documents.¹⁹²

On the other hand, Mr. Silvestre L. Martinez disclosed in the hearing held on May 11, 2017 that during Entry Formalities, he requested certain documents from the captain and one of which is a Load Port Survey Report (LPSR); that the captain was not able to provide the document, but instead provided him with other documents detailing the particulars of the shipment, such as the Inward Board Manifest, the Bill of Lading (BL), and Crew List.¹⁹³

Meanwhile, Captain Olores stated in his Judicial Affidavit that when Mr. Romero presented him the entry formality documents for signing, he observed some clerical errors and asked him to make necessary corrections, and the members of the BOC boarding team noted his observation and directive to rectify said errors; that Mr. Romero acknowledge the inadvertence and assured that he will make necessary corrections; that Mr. Romero also assured Captain Olores that legal requirements for the importation of the cargo were complied with by SL Harbor and that the BOC issued a permit for the discharging of cargo; and in good faith and with the assurance given by Mr. Romero that said minor errors will be corrected, he signed the entry formality documents.

During the April 4, 2017 hearing, Captain Olores further confirmed that he signed the manifest although he knew there was error since he already pointed out the error and told them that he will make the correction; and that he was assured by the authorities present that it he could sign the document and that they will make the corrections.¹⁹⁴

¹⁸⁹ Sec. 405. *Liability of Importer for Duties and Taxes.* – Unless relieved by laws or regulations, the liability for duties, taxes, fees, and other charges attached to importation constitutes a personal debt due and demandable against the importer in favor of the government and shall be discharged only upon payment of duties, taxes, fees and other charges. It also constitutes lien on the imported goods which may be enforced while such goods are under customs' custody.

¹⁹⁰ April 25, 2017 TSN, p. 48.

¹⁹¹ April 25, 2017 TSN, p. 48.

¹⁹² April 25, 2017 TSN, p. 49.

¹⁹³ May 11, 2017 TSN, pp. 61-63.

¹⁹⁴ April 4, 2017 TSN, pp. 107-109.



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Mr. Nelson A. Romero also states in his Judicial Affidavit that he assured Captain Olores that he will just make the necessary corrections afterwards and asked Captain Olores to sign the documents (Notice of Arrival, General permit, Inward Foreign Manifest), which he did in good faith; that the members of the BOC boarding team also noted the corrective instructions of Captain Olores; and that when he requested the BOC boarding team to allow him to correct the errors, they refused and said *"it was okay and there was no problem"*; thus, he accepted their assurance in good faith. During cross-examination on April 4, 2017, he said that he intends to correct the error but Customs said *"no need, it is okay"*.¹⁹⁵

Mr. Silvestre L. Martinez stated in his Judicial Affidavit that the LPSR indicates the name of the ship "M.T. Green Point" rather than MT Alpine Magnolia; the country of origin as "Malaysia" and the port of loading as "Port Klang, Malaysia", but its Bills of Lading (BL), Manifest and statistical supplement indicate that the vessel was loaded in Singapore; the BL indicated on the LPSR is VM-GRNPTMAL-3 while the cargo of the MT Alpine Magnolia is covered by two (2) bills of lading numbered BL00014103 and BL00014104; the LPSR indicates a total cargo of 18492.901 M/T while the two BLs of the MT Alpine Magnolia indicate that it is carrying 43,980.5 M/T of fuel oil.

On May 11, 2017, Mr. Silvestre L. Martinez, however, testified that the captain of the vessel has nothing to do absolutely with the preparation of LPSR;¹⁹⁶ that he did not inquire about the LPSR of MT Alpine Magnolia;¹⁹⁷ that he did not seek clarification from the accredited cargo surveying company about the name in the LPSR which is different from the name of the vessel that arrived;¹⁹⁸ that his office has no contact with the Accredited Cargo Surveying Company (ACSC); and that it is the importer/shipper which has the contact.¹⁹⁹

Apparently, there is an issue about the requirement of presenting an LPSR and the consequence if said document is absent in an importation. On this point, Customs Administrative Order No. 3-2010²⁰⁰ dated May 12, 2010 which provides:

"II. GENERAL PROVISIONS:

- 1.The Commissioner of Customs shall provide supplemental operation and administrative guidelines for the smooth implementation of the BBBCCEP.

¹⁹⁵ April 4, 2017 TSN, p. 58.

¹⁹⁶ May 11, 2017 TSN, p. 114.

¹⁹⁷ May 11, 2017 TSN, p. 119.

¹⁹⁸ May 11, 2017 TSN, p. 119.

¹⁹⁹ May 11, 2017 TSN, p. 119.

²⁰⁰ CTA Docket, p. 1931.



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2. Absent the required Load Port Survey (LPS) issued by the accredited surveyor, a Discharge Port Survey (DPS) shall be conducted upon arrival of the cargo at the port of discharge the procedures for which shall be included in the said supplemental guidelines to be issued.
3. Further, without the required LPS, the cargo shall be considered as a "high risk shipment" and automatically be subject to a continuing alert and underguarding until the cargo shall have been examined by a chosen Accredited Cargo Surveying Company (ACSC) and the DPS issued therefor. Also, the Importer/consignee of the cargo shall be imposed a penalty as provided for under Section 3610 vis-à-vis Section 3514 of the TCCP, as amended, if warranted."

In relation thereto, Customs Memorandum Order No. 18-2010 was issued on May 12, 2010²⁰¹ states:

"2. Definition of Terms.

2.1 Accredited Cargo Surveying Company (ACSC) – a surveying company possessing a duly approved accreditation issued by the Committee for Accreditation of Cargo Surveying Companies (CACSC).

2.2 Committee for Accreditation of Cargo Surveying Companies (CACSC)- the accreditation committee created under AO 243, as amended, directly under the supervision and control of the Office of the President tasked and authorized to grant and approve accreditation of cargo surveying companies and periodically review the performance thereof. The CACSC may also investigate violations of the provisions of this Order and thereafter suspend and/or revoke the accreditation given to a cargo surveying company.

2.3 Bulk Cargo- Refers to cargoes in a mass of one commodity not packaged, bundled, bottled or otherwise packed.

2.4 Break-Bulk Cargo- Refers to non-containerized general cargo stored in boxes, bales, pallet or other individual units to be loaded onto or discharged from vessels, not shipped in containers or in bulk.

2.5 **Load Port Survey (LPS) Report- A report issued by an ACSC for Bulk/Break-Bulk Cargo to be imported into the Philippines. The report shall be**

²⁰¹ CTA Docket, p. 1933-1940.



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submitted to the BOC directly from the ACSC in a secure electronic format.

2.6 Discharge Port Survey (DPS) Report- A report issued by an ACSC for Bulk/Break-Bulk Cargo after the conduct of a survey at the port of discharge."

xxx

5. Operational Provisions:

5.1 The importer must inform his exporter of the requirements of this Order and shall ensure that the cargoes are surveyed by an ACSC. It is the responsibility of the importer of bulk and break bulk cargo to obtain from the BOC the names and overseas addresses of ACSCs and to communicate this information to the seller/exporter of the goods.

xxx

5.5 Any importer obtaining the services of an ACSC pursuant to the preceding Section shall be allowed to file entries for the imported articles and pay the proper duties, taxes and other fees therefor, prior to its arrival in the Philippine port of destination, Provided that xxx

5.6 As soon as the cargo arrives at the Philippine port of destination, the importer may immediately cause the discharge and withdrawal of the same from customs premises and/or custody provided that the declarations in the import entries are confirmed by the LPS Report and upon presentation of the proof of payment of duties, taxes and other fees as well as compliance with other pre-requisite for a valid importation.

xxx

5.9 Shipments requiring the LPS without undergoing the same shall be subjected to the DPS by an ACSC selected by the importer and confirmed/approved by the OSS." (Boldfacing & underscoring supplied)

It is apparent that an LPSR is a report to be submitted to the BOC directly from the ACSC in a secure electronic format. It is the duty of the importer to ensure that the cargoes are surveyed by an ACSC. It would appear that the request of the BOC team for Captain Olores to provide them with an LPSR during the Entry Formalities is not therefore sanctioned by the BOC's own issuance. In fact, since the LPSR secured by the BOC contains a vessel's name different from that of petitioner, the shipment should have been subjected to



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the DPS which will be selected by an importer and to be confirmed/approved by the OSS pursuant to clause 5-9 of [Customs] Memorandum Order No. 18-2010.

No fraud can be attributed to Captain Olores in signing petitioner's documentation during boarding formalities despite knowledge about the inaccuracies in the LPSR since compliance with the said LPSR is not the function of the captain of the vessel, but that of the ACSC, whose service has been availed of by the importer. To repeat, since the LPSR secured by the BOC contains a vessel's name different from that of petitioner, the shipment should have been subjected to the DPS which will be selected by an importer and to be confirmed/approved by the OSS pursuant to clause 5-9 of Customs Memorandum Order No. 18-2010.

***Violation of Customs' procedures makes
the Warrant of Seizure and Detention,
and the forfeiture decision void***

The Court in the August 4, 2017 Resolution explained the irregularity in the procedures before the Bureau of Customs:

Under Section 1111 of the CMTA provides for a situation when an alert order may be issued and the conduct expected from an alerting officer subsequent to issuance of such alert orders, viz:

“Section 1111. Alert Orders.— Alert orders are written orders issued by customs officers as authorized by the Commissioner **on the basis of derogatory information regarding possible noncompliance with this Act. An alert order will result in the suspension of the processing of the goods declaration and the conduct of physical or nonintrusive inspection of the goods** within forty-eight (48) hours from issuance of the order. Within forty-eight (48) hours or, in the case of perishable goods, within twenty-four (24) hours from inspection, **the alerting officer shall recommend the continuance of processing of goods in case of a negative finding, or issuance of a warrant of seizure and detention if a discrepancy between the declaration and actual goods is found.** The Bureau's information system shall immediately reflect the imposition or lifting of an alert order.

Derogatory information shall indicate the violations and other necessary specifics thereof. For this purpose, the following shall not be considered derogatory information:



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(a) General allegations of misclassification without providing the appropriate tariff heading and duty of the shipment to be alerted;

(b) General allegations of misclassification without providing the appropriate tariff heading and duty of the shipment to be alerted;

(c) General allegations of over-quantity without indicating the source of information supporting the allegation;

(d) General allegations of misdeclaration in the entry without indicating the suspected actual contents thereof; and

(e) General allegations of importations contrary to law without indicating the specific law or rule to be violated.

No alert order shall be issued on account of allegations of undervaluation unless said undervaluation is caused by the submission to customs of forged or spurious invoice or other commercial documents.

An alert order may be issued only after lodgement of the goods declaration and prior to the release of goods from customs custody. Under no circumstances shall the suspension of the processing of goods declaration be allowed except through an alert order issued by an authorized customs officer.

The costs of the physical inspection shall be borne by the Bureau: *Provided*, That such cost shall be reimbursed by the owner prior to the release of the goods if the physical inspection results in the assessment of additional duties or taxes or the issuance of a warrant of seizure.

The Commissioner shall be notified of the recommendation by the alerting officer within twenty-four (24) hours from the issuance of the alert order. Alert orders shall be dated and assigned a unique reference number in series which shall be the basis for reporting to and monitoring by the Commissioner and the Secretary of Finance.

The Bureau shall create a central clearing house for alert orders and shall submit reports quarterly on the status thereof." (*Boldfacing & underscoring supplied*)

Clearly, Alert Orders are issued on the basis of derogatory information regarding possible noncompliance with CMTA. Issuance



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of Alert Orders will result in the suspension of the processing of the goods declaration and the conduct of physical or non-intrusive inspection of the goods. The alerting officer is required, within forty-eight (48) hours (or twenty-four hours in the case of perishable goods) from inspection, to recommend either for the continuance of the processing of goods in case of a negative finding, or the issuance of a WSD if a discrepancy between the declaration and actual goods is found. The Commissioner shall be notified of the recommendation by the alerting officer within twenty-four (24) hours from the issuance of the alert order.

After the recommendation of the alerting officer, the District Collector of Customs is tasked to do the following as provided under Sections 1116, 1117 and 1119 of the CMTA:

“Section 1116. *Seizure or Release of Goods.*— The District Collector shall **issue an order of release or a warrant of seizure** within five (5) days, or two (2) days in case of perishable goods, **upon the recommendation of the alerting officer or any other customs officer.** The District Collector shall immediately **make a report of such seizure or release to the Commissioner.**

Section 1117. *Warrant of Seizure or Order of Release.*— The **District Collector shall have the authority to issue a warrant of seizure of the goods upon determination of the existence of probable cause and in case of nonexistence thereof, the issuance of order of release.** In case the District Collector issued an order of release, the District Collector shall immediately transmit all the records to the Commissioner who shall automatically review within forty-eight (48) hours, or within twenty-four (24) hours in case of perishable goods. When no decision is made by the Commissioner within the prescribed period, the imported goods shall be deemed released.

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Section 1119. *Service of Warrant of Seizure.*— **The District Collector shall cause the service of warrant of seizure to the owner or importer of the goods or the authorized representative thereof. The owner or importer shall be given, an opportunity to be heard during the forfeiture proceedings.”**
(*Boldfacing supplied & underscoring supplied*)

The District Collector is required to issue either an order of release or a warrant of seizure within five (5) days (or two (2) days in case of perishable goods), upon the recommendation of the alerting officer or any other customs officer, and shall immediately make a report of such seizure or release to the Commissioner. It is also

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required that the District Collector shall cause the service of warrant of seizure to the owner or importer of the goods or the authorized representative thereof, who shall be given an opportunity to be heard during the forfeiture proceedings.

Thus, before a WSD is issued by the District Collector, upon determination of the existence of probable cause, a prior recommendation from an alerting officer is required. The recommending officer's recommendation may be given only after an Alert Order has been issued pursuant to Section 1116 in relation to Section 1111 of the CMTA.

In this case, a WSD was issued by Julius B. Premediles, the District Collector of Customs of the Port of Limay, Bataan against petitioner and its cargo,²⁰² based on the recommendation of Silvestre L. Martinez, the Intelligence Officer of the BOC.²⁰³ A copy of said WSD was served when the BOC team and the Philippine Coastguard boarded the vessel on 17 December 2016.²⁰⁴

Notwithstanding the issuance and service of the WSD, respondents' witness, Julius B. Premediles, admitted during trial that he recommended to the Commissioner the issuance of an Alert Order but **no Alert Order** was issued,²⁰⁵ and he later said during the same hearing that an Alert Order was **issued LATE**,²⁰⁶ pertinent part of the TSN reads as follows:

“ATTY. LOYOLA

Q **Was there ever an Alert Order issued based on your recommendation Mr. Collector?**

MR. PREMEDILES

A **There is no Alert Order Sir. On January 16 when I'm waiting for the Alert Order, then the overt act was done so it is my prudent to issue the Warrant of Seizure and Detention.**

xxx

xxx

xxx

ATTY. LOYOLA

So, there was no Alert Order issued in this case?

JUSTICE DEL ROSARIO

Do you confirm that? There was no Alert Order issued in this case?

²⁰² Judicial Affidavit of Julius B. Premediles marked as Exhibit R-1.

²⁰³ Judicial Affidavit of Silvestre L. Martinez, marked as Exhibit R-2.

²⁰⁴ Judicial Affidavit of Captain Jerry Olores marked as Exhibit P-4, CTA Docket, pp. 1166-1174; Judicial Affidavit of Mr. Nelson A. Romero marked as Exhibit P-3, CTA Docket, pp. 1308-314.

²⁰⁵ April 25, 2017 TSN, pp. 58-59.

²⁰⁶ April 25, 2017 TSN, p. 60.



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MR. PREMEDILES

A The Alert Order was issued (interrupted)

ATTY. LOYOLA

Q Just say yes or no.

JUSTICE DEL ROSARIO

Was there an Alert Order issued or none?

MR. PREMEDILES

A **There was but late** Sir, the over act was already done so **I don't need the Alert Order because there was already a probable cause.**"

Clearly, the mandate of the CMTA regarding the issuance of an Alert Order prior to issuance of an WSD, upon recommendation of the alerting officer, was not observed in this case.

The Court notes the existence of a General Permit dated December 2016 granted to Coastway to discharge all import cargoes of MT Alpine Magnolia and to load export cargoes in accordance with the Customs Rules and Regulation at berth "SL Harbor Bulk Terminal Corp. CBM".²⁰⁷ There is also a letter-application for special permit to discharge the cargo to the IFO storage tank of SL Harbor located at Limay, Bataan dated December 9, 2016,²⁰⁸ to which Dr. Zaldy E. Almoradie, Deputy District Collector, Operations/Admit responded to on December 14, 2016. His response states as follows:

"To PID personnel:

Please accord the usual cooperation and convenience to the above-named vessel in the matter of discharging its fuel cargo in accordance with existing laws, rules and regulations."

The presence of the General Permit and the note of Dr. Almoradie to the application for special permit to discharge cargo; and the absence of an Alert Order, show that there was infirmity in the issuance of the WSD.

Anent the required hearing of the forfeiture proceedings pursuant to Section 1119 of the CMTA, respondents' witness, Mr. Premediles confirmed that hearings were conducted in the forfeiture case at the BOC National Office, and he was present in all those hearings.²⁰⁹ He said, however, that he was not aware that at the time he issued the January 20, 2017 Decision, Atty. Valdez (hearing officer) had previously scheduled a hearing dated February 1, 2017 for the presentation of evidence by SL Shipping and Herma

²⁰⁷ Exhibit P-4-13; CTA Docket, p. 1220.

²⁰⁸ Exhibit P-3-6; CTA Docket, p. 1321.

²⁰⁹ April 25, 2017 TSN, pp. 71-72.

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Shipping.²¹⁰ He insisted, however, that after the January 10 hearing, he **verbally informed** Atty. Valdez that there is no need to set other hearings because he has a decision already²¹¹ and in that conversation, Atty. Valdez did not inform him of the setting for another hearing;²¹² and that Atty. Valdez told him “*you will be the one to decide, I’m just assisting you, kayo po bahala kasi nandun naman po kayo during the hearing*”.²¹³

Respondents’ witness (Mr. Premediles) admission that he only informed **verbally** the hearing officer that there is no need to set another hearing is a ground to rule that there is violation of procedural due process, which can make the assailed Decision on forfeiture a nullity. In fact, the Consolidated Disposition Form approved by Commissioner Nicanor E. Faeldon on June 21, 2017 takes notice of the Transcript of Stenographic Notes for the Hearings held on 05 January 2017, 10 January 2017 and 27 January 2017, which show that the proceedings held were merely for the reception of evidence and pleadings on the Motions filed by Claimant SLHBTC and MT Alpine and not on the main seizure cases; and that even the hearing officer and the government prosecutor affirmed that the issue at hand during the hearings conducted purports only to the Motions filed by SLHBTC and MT Alpine and not the main seizure case.²¹⁴

On this point, Section 1125 of the CMTA provides:

“Section 1125. *Decision in Forfeiture Cases.*— In forfeiture cases, the District Collector shall issue an order for hearing within fifteen (15) days, or five (5) days in case of perishable goods, from issuance of the warrant. The District Collector shall render a **decision within thirty (30) days upon termination of the hearing, or within ten (10) days in case of perishable goods**. The decision shall include a declaration of forfeiture, the imposition of a fine or such other action as may be proper.” (*Boldfacing & underscoring supplied*)

The afore-quoted provision of the CMTA is plain and categorical in mandating the District Collector to render a decision involving forfeiture cases within thirty (30) days (or within ten (10) days in case of perishable goods) **upon termination of the hearing**.

Since the District Collector made only a verbal communication with the hearing officer about his stand not to set other hearing; and that respondents recognized in the attached Consolidated

²¹⁰ April 25, 2017 TSN, p. 86.

²¹¹ April 25, 2017 TSN, p. 87.

²¹² April 25, 2017 TSN, p. 87.

²¹³ April 25, 2017 TSN, p. 88.

²¹⁴ Consolidated Disposition Form (page 8) attached to respondents’ Memorandum (Re: Motion/Application for the Immediate Release of the MT Alpine Magnolia).



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Disposition Form that the proceedings held on 05 January 2017, 10 January 2017 and 27 January 2017 were merely for the **reception of evidence and pleadings on the Motions filed by SLHBTC and MT Alpine, and not on the main seizure cases, it would appear that there was no formal termination of the seizure proceeding at the time the District Collector issued the assailed Decision.** Section 1125 of the CMTA dictates that before he issued the assailed Decision, the District Collector should have, at the very least, issued a notice informing the parties that he is already terminating the hearing on seizure proceedings and submitting the same for his decision. (Boldfacing supplied)

In fine, the WSD was issued without the pre-requisite Alert Order, and the forfeiture decision was issued even without formal termination of the seizure proceedings as required by the CMTA. Since the WSD and the forfeiture decision were issued against the mandatory provisions of the CMTA, the same should perforce be considered void.²¹⁵

To recapitulate, the Court finds that MT Alpine is a common carrier under Voyage Charter at the time the incident happened. It is exempt from seizure and forfeiture pursuant to Section 1113(a) and (k) of the CMTA. The Court holds that there is no sufficient evidence to prove that petitioner's owner or agent has any participation in the *alleged* smuggling/loop loading. Thus, the order of forfeiture of MT Alpine Magnolia issued by respondent District Collector of Bataan, in violation of the mandatory provisions of the CMTA and petitioner's right to due process, which was deemed affirmed by the Commissioner of Customs, is unlawful and invalid and must perforce be cancelled and set aside.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. The Decision of the District Collector of Bataan, which was deemed affirmed by the Commissioner of Customs, ordering the forfeiture of MT Alpine Magnolia is **REVERSED AND SET ASIDE**. Accordingly, the order of this Court in the August 4, 2017 Resolution to release MT Alpine Magnolia is **DECLARED PERMANENT**. The Surety Bond (PIIC Bond No. BD-NIL-RS-17-0000345-00-D dated 16 August 2017) issued by Pioneer Intercontinental Insurance

²¹⁵ Article 5 of the Civil Code provides that "acts executed against the provisions of mandatory and prohibitory laws shall be void, except when the law itself authorizes their validity; see also Commissioner of Internal Revenue vs. Reyes, G.R. No. 159694, January 27, 2006 where the assessment was declared void for failure to comply with Sec. 228 of the Tax Code.



Decision

*MT Alpine Magnolia vs. Commissioner of Bureau of Customs
and District Collector of Bataan*

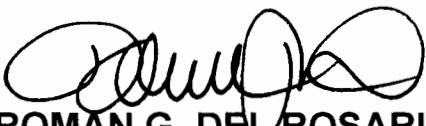
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Corporation in the amount of One Billion Pesos (Php1,000,000,000.00) is **ORDERED RELEASED AND DISCHARGED UPON FINALITY OF JUDGMENT.**

Respondent's Compliance and Manifestation filed on August 1, 2018 is **NOTED.**

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice

(Inhibited)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice