REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

7107 ISLANDS SHIPPING CORPORATION, Petitioner,	C.T.A. EB NO. 912 (C.T.A. Case No.7955)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
	Promulgated:
DEPARTMENT OF FINANCE, Respondent.	APR 01 2014

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DECISION

Fabon-Victorino, J.:

This is an appeal from the Decision[1] dated March 6, 2012 and Resolution[2] dated June 6, 2012, promulgated by the Court in Division which in effect sustained the decision of respondent Secretary of Finance directing the forfeiture of Panamanian vessel M/V Coco Explorer a.k.a. 7,107 Islands Cruise on the ground that it was illegally imported.

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[1]*En Banc docket*, pp. 39-56.
[2]*Id.*, pp.58-62.

THE PARTIES

Petitioner 7107 Island Shipping Corporation is a Philippine corporation with business address at 2nd Floor, Palawan Center, 832 Arnaiz Avenue cor. Paseo de Roxas, Makati City. It is engaged in the domestic shipping business by authority of the Maritime Industry Authority (MARINA) and the registered owner and operator of the M/V 7107 Island Cruise.

Respondent, on the other hand, is the Secretary of the Department of Finance, empowered to perform the duties and functions of his office. He may be served with summons at the Department of Finance, Roxas Boulevard, Manila.

THE FACTS

The facts as established by the evidence on record are as follows:

In a letter dated August 31, 2007 received by the Bureau of Customs (BOC) on September 1, 2007, Consuelo Pausanos, the country representative of C&C Marine A/S Denmark informed the District Collector of the Port of Batangas that Panamanian vessel M/V Coco Explorer would arrived on September 4, 2007 and would stay at that Port for minor repairs.

On September 4, 2007, M/V Coco Explorer arrived at the Port of Batangas from Thailand as evidenced by the Oath on Entering Vessel from Foreign Port executed by the ship captain.

On September 24, 2007, C&C Marine A/S and Esteban Tajanlangit, as representative of petitioner, then yet to be incorporated, executed a Memorandum of Agreement (MOA) for the purchase of M/V Coco Explorer for a price of US$ 1,800.000.00.

On November 15, 2007, upon petitioner's full payment of the agreed purchase price, C&C Marine A/S executed a Bill of

Sale and a Protocol of Delivery and Acceptance transferring and conveying unto petitioner its 100% shares in the Vessel.

On November 27, 2007, petitioner secured a "Clearance of Vessel to a Foreign Port" to sail from the Port of Batangas to Mariveles, Bataan. The Vessel drydocked at Herma Shipyard Incorporated located at Herma Industrial Complex, Mariveles, Bataan where some repairs were made (Drydocking Certificate dated December 14, 2008). Thereafter, the Vessel proceeded to the Port of Manila (POM) for further repairs and upgrading.

On December 26, 2007, the Vessel berthed at the POM *sans* any clearance from the BOC.

On January 17, 2008, the Chief of Run After the Smugglers (RATS) Group issued a Mission Order by virtue of which the operatives conducted initial inquiries about the presence of the Vessel in the port.

On January 21, 2008, the Chief of RATS Group issued a "Subpoena Duces Tecum/Ad Testificandum" which was served upon petitioner.

On January 25, 2008, Esteban Tajanlangit, his counsel and representatives from OROPHIL Shipping International Co. Inc., the company engaged by Esteban Tajanlangit sometime in September 2007 to manage and market the Vessel as a cruise ship, appeared during the investigation conducted at the RATS office.

On February 25, 2008, petitioner secured its Certificate of Incorporation from the Securities and Exchange Commission (SEC).

On March 3, 2008, petitioner filed with the MARINA an application for authority to acquire the subject Vessel.

On March 4, 2008, the District Collector of the POM, issued a Warrant of Seizure and Detention (WSD) against the Vessel under Seizure Identification No. 2008-854 for having been illegally imported in violation of Section 2530(f) & (1) (5) of the Tariff and Customs Code of the Philippines (TCCP). The WSD was implemented by the RATS Group on March 6, 2008.

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On March 19, 2008, petitioner moved to quash the WSD to which the RATS Group interposed an opposition.

On May 23, 2008, the District Collector of the POM lifted the WSD and ordered the release of the Vessel to petitioner, which ruling was affirmed by the Commissioner of Customs (COC) on August 21, 2008.

On automatic review, respondent reversed and set aside the Decision of the District Collector of the POM and ordered the forfeiture of the Vessel in his 1st Indorsement dated September 17, 2008, in this wise:

> In view of the foregoing, the Order of District Collector, POM in Seizure Identification Case No. 2008-054 lifting the Warrant of Seizure Detention (WSD) issued against M/V Coco Explorer 2 a.k.a. M/V 7,107 Islands Cruise is hereby REVERSED AND SET ASIDE. Accordingly, the subject vessel is hereby FORFEITED for proper disposal in compliance with existing pertinent laws and regulations.

On May 6, 2009, respondent denied petitioner's Motion for Reconsideration. Petitioner's Motion for Leave to Admit Second Motion for Reconsideration suffered the same fate on June 22, 2009.

On July 30, 2009, petitioner appealed respondent's adverse ruling via a Petition for Review before the Court in Division. Incorporated therein was the prayer for issuance of a temporary restraining order (TRO) and/or preliminary injunction to enjoin respondent from enforcing the forfeiture order, or for issuance of an order to suspend the implementation of the forfeiture order and temporary release *pendente lite* of the Vessel under bond to petitioner.

On September 30, 2009, respondent filed his Answer.

On November 11, 2009, the Court in Division denied petitioner's prayer for issuance of a TRO on the ground that

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it "failed to prove the existence of a clear and unmistakable right" for the grant of the relief sought. Besides, the act sought to be enjoined had become *fait accompli,* hence, injunction would no longer lie. The Court in Division, likewise, denied petitioner's plea for temporary release of the Vessel under bond having found the "existence of *prima facie* fraud" in the importation of the Vessel pursuant to Section 2301 of the TCCP.

On December 2, 2009, petitioner filed a Motion for Reconsideration but it was denied. This prompted petitioner to elevate the incident to the Supreme Court in a Petition for Certiorari under Rule 65 of the Rules of Court. The petition was however dismissed in a minute Resolution dated July 21, 2010, in this wise:

> Acting on the petition for certiorari assailing the Resolutions dated 11 November 2009 and 18 March 2010 of the Court of Tax Appeals in C.T.A. Case No. 7955, the Court resolves to ***DISMISS*** the petition for failure to show any grave abuse of discretion in rendering the challenged resolutions which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence.
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> Moreover, the petition failed to conform or comply strictly with the requirements specified under Rule 65 and other related provisions of the 1997 Rules of Civil Procedure, as amended, governing petitions for certiorari, prohibition and mandamus filed with the Supreme Court. It appears that the verification of the petition and certification against forum is insufficient or defective as affiant failed to state that he has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records in violation of Sections 1 and 5, Rule 45 in relation to Section 4, Rule 7, as amended by Administrative Matter No. 00-2-10-SC.

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On August 16, 2010, the Court in Division denied petitioner's Motion for Early Resolution and/or Summary Judgment and its subsequent motion for reconsideration on October 22, 2010.

On November 3, 2011, petitioner's Motion for Temporary Use of the Vessel was, likewise, denied.

On March 6, 2012, the Court in Division denied the Petition for Review ruling that there was intent to unload the Vessel when it entered the Philippine territory pursuant to Section 1202[3] of the TCCP. Thus, as an imported article, it was correspondingly subject to the provisions of Sections 100[4] and 1201[5] of the same law. With the existence of fraud in the importation of the Vessel or at least an attempt to commit it, its forfeiture was in order.

Petitioner moved to reconsider the assailed Decision but it was denied for lack of merit in the similarly assailed Resolution of June 6, 2012.

On July 6, 2012, petitioner instituted the instant Petition for Review before the Court *En Banc*, and its Supplemental Petition for Review[6] filed on July 9, 2012.

THE ISSUE

The lone issue raised by petitioner for the resolution of the Court is:

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[3]Section 1202. When Importation Begins and Deemed Terminated. - Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.

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

[5]Section 1201. Article to be Imported Only Through Customhouse. — All articles imported into the Philippines whether subject to duty or not shall be entered through a customhouse at a port of entry.

[6]*En Banc* docket, pp. 223-246.

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Whether or not the Second Division erred in upholding the decision of the Respondent ordering the seizure and forfeiture of the Petitioner's Vessel for non-payment of import duties in violation of the TCCP.

In espousing a stance contrary to the finding of the Court in Division, petitioner insists that:

I. Contrary to the Second Division's finding, there was no importation when the Vessel first entered Philippine territory on September 4, 2007.

   A. Section 1202 and 106 of the TCCP do not apply to vessels.

   B. The Vessel lawfully entered Philippine territory solely for the purpose of repairs.

   C. Mr. Tajanlangit decided to purchase the Vessel only after it entered Philippine territory.

   D. MARINA approval is required before a vessel may be lawfully imported or purchased.

II. Contrary to the Second Division's finding, the seizure and forfeiture of the Vessel are not warranted because the Petitioner never committed fraud nor even intended to deprive the Government of any lawful taxes and duties.

III. The Second Division should have nullified the Assailed DOF Resolutions for being issued in patent and brazen violation of Petitioner's right to administrative due process.

Petitioner insists that there was no importation when M/V Coco Explorer arrived at the Port of Batangas on

September 4, 2007. The finding of the Court in Division to the contrary is erroneous since Section 1202 of the TCCP upon which the ruling is anchored is not applicable to vessels but only to cargoes which are imported into the country on board a carrying vessel. M/V Coco Explorer could not be considered a cargo for unlike the latter it had a nationality, thus protected by its flag state and guaranteed immunity from the taxing jurisdiction of the coastal state. Not being a cargo at the time it entered the Philippine territory, it could not be subject to the payment of import duties under Section 100 of the TCCP.

Granting that there was an obligation to pay duties and taxes on the importation of the Vessel, the same accrued only after the MARINA approved its Application for Authority to Acquire Thru Importation or Outright Purchase on May 6, 2008.

Also for the reason that the Vessel was not imported, it was not required to pass through a customhouse at the port of entry pursuant to Section 1201 of the same Code. In any event, petitioner substantially met this requirement when it was issued by the Collector of the Port of Subic a Certificate of Approval of Conversion dated February 17, 2009. Under the MARINA-BOC Memorandum of Agreement, such certification would indicate that the pertinent vessel passed through a customhouse and taxes and duties had been paid thereon.

Petitioner further claims that the sole purpose of bringing the Vessel to the Philippines was to have it repaired. Thus, the conclusion of the Court in Division that there was intent to unload the Vessel when it arrived at the Port of Batangas is flawed. Admittedly, repairs were actually done at Herma Shipyard, Inc., in Mariveles, Bataan and not at the Port of Batangas, however, this is not sufficient to support the imputation of intention to fraudulently unload the Vessel in the country. In the past, specifically in September 2002 and March 2007, the Vessel also entered the Philippine territory via the same port and underwent repairs and drydocking at Keppel Batangas Shipyard.

The ruling of the Court in Division that petitioner's evidence failed to show compliance with Section 105[7] of the TCCP is misplaced, says petitioner. The Collector of the Port of Batangas himself did not require it to post a re-export bond required under the said provision as there was no conditionally-free importation to speak of. This action of the Collector of the Port of Batangas enjoys the presumption of regularity in the performance of his official function.

Contrary to the finding of the Court in Division, Mr. Tajanlangit decided to purchase the Vessel only after it entered the Philippines. No evidence on record shows that the seller C&C Marine A/S and petitioner through Mr. Tajanlangit priorly perfected a contract of sale over the subject Vessel which was concealed to escape payment of customs duties. The MOA was executed by the parties only on September 24, 2007, or twenty (20) days after the Vessel's arrival from Thailand.

The BOC also went beyond its competence when it ruled that the Vessel was deemed imported into the country as the jurisdiction to approve the importation and purchase of foreign vessel belongs to the MARINA. Without such approval, the BOC may not assess and collect duties and taxes on the imported vessel. In other words, the buyer needs to wait for such approval to acquire the vessel through purchase or import before the said purchase or import may be consummated. It is only after the grant of the application to acquire the vessel by the MARINA that the BOC may assess and collect the duties and taxes pertaining to the importation of the subject Vessel.

A buyer, Filipino or a foreign national, who wants to import into the Philippines a foreign-flag vessel must first cause the deletion or cancellation of the registration of the vessel in the official registry book of its flag state. Without the certificate of deletion from its flag state and despite the sale either within the Philippine waters or overseas, the

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[7]Section 105.Conditionally-Free Importations. – xxx

d. Articles brought into the Philippines for repair, xxx to be re-exported upon completion of the repair xxx: Provided, That the Collector of Customs shall require the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, conditioned for the exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from the date of acceptance of the import entry:"

nationality of the foreign-flag vessel remains the same. For this reason, the subject Vessel can freely leave the port of entry after its repair and dry-docking, or even without such repair since the customs authorities have no jurisdiction to detain it for non-payment of duties and taxes.

Petitioner further takes the position that seizure and forfeiture of the Vessel are not warranted as it never committed fraud nor even intended to deprive the Government of any lawful taxes and duties.

This stance springs from the contention that since M/V Coco Explorer was a foreign vessel whose sole purpose was to have repairs in the Philippines, there was no need to pass through a customhouse or pay duties and taxes at the time it entered the Port of Batangas on September 2, 2007. It complied in good faith with the formalities required and paid port charges in relation to its initial entry into the country.

With regard to its registration with the Philippine Economic Zone Authority (PEZA) as a Tourism Economic Zone Enterprise and with the Subic Bay Metropolitan Authority (SBMA) as a Subic Bay Freeport Enterprise, the same should not be taken against it. The tax exemptions that went with the registrations and accorded to it were valid and legal incentives and not fraudulent being in the nature of tax avoidance.

As to the finding of fraud, petitioner points out that fraud is never presumed. Any allegation of fraud must be sufficiently substantiated which burden respondent failed to discharge. In stark contrast, petitioner was able to adduce evidence of good faith when it complied with the legal requirements in relation to the Vessel's initial entry into the Country and its subsequent registration with the MARINA.

Petitioner also believes that its right to administrative due process was violated when respondent failed to give petitioner its day in court and accord it the opportunity to scrutinize the evidence upon which the accusation of illegal importation committed with fraud was hinged.

Even granting that there was a violation of the TCCP, the alleged fraud in the importation of the Vessel was never established to warrant its forfeiture. More importantly, the alleged fraud occurred after and not prior to the institution of the seizure proceedings and/or while the proceedings were on going before the Law Division of the POM.

Petitioner's right to equal protection of law was likewise violated when the Court in Division denied its prayer for the release of the Vessel under bond *pendente lite.* In the case of *NPC Alliance vs. Commissioner of Customs* docketed as *CTA Case No. 7742*, the same Court in Division allowed the release of imported goods forfeited by the COC while the case was still pending. For this reason, petitioner reiterates its prayer for the release of the Vessel on bond *pendente lite*.

In his Consolidated Comment,[8] respondent interposes the following counter-arguments:

I. THERE WAS FRAUDULENT IMPORTATION OF THE VESSEL "7107 ISLANDS CRUISE", THEN NAMED "M/V COCO EXPLORER 2". AS SUCH FORFEITURE OF THE VESSEL IS WARRANTED.

II. PETITIONER'S DEFENSES ARE INSUFFICIENT TO DISPUTE RESPONDENT'S FINDINGS OF FRAUDULENT IMPORTATION.

III. THE RELEASE OF THE VESSEL *PENDENTE LITE* IS ALREADY SETTLED WITH FINALITY.

Respondent asserts that there was already importation when M/V Coco Explorer 2 arrived in the Philippines on September 4, 2007 in view of the intention to unload the Vessel and make the Philippines as its final destination. Much more, such importation was attended with fraud as shown in the following established facts, to wit:

[8]*En Banc* docket, pp. 270-308.

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1. The Vessel, which allegedly entered Philippine jurisdiction for repairs, intended and actually stayed in the country, making the Philippines, the articles' port of destination;

2. The Vessel failed to secure a transhipment permit which is required of foreign articles simply passing through the country;

3. The Ports of Call states that the purpose of the trip of the Vessel to the Philippines is for "delivery";

4. Mr. Esteban Tajanlangit Jr. immediately entered into a Memorandum of Agreement (MOA) with C&C Marine A/S twenty (20) days after the Vessel's arrival or on September 24, 2007;

5. Several stipulations in the Memorandum of Agreement between the C&C Marine A/S and Esteban Tajanlangit, Jr. lead to the inescapable conclusion that the Vessel entered the country for delivery:

   a. Mr.Tajanlangit, eight (8) days after the Vessel's arrival or on September 12, 2007, made a deposit of 10% of the purchase price of two hundred sixteen thousand US dollars ($216,000.00);

   b. The buyers have inspected the Vessel at Sriracha Harbor, Thailand and have accepted the vessel following inspection and the sale was outright and definite; and

   c. The Vessel shall be delivered and taken over safely afloat at a safe and accessible berth or anchorage in the seller's option at the Port of Batangas, Philippines;

6. No repairs was undertaken by then owner C&C Marine A/S after it arrived at the POB;

7. Mr.Tajanlangit, Jr. immediately executed his plans of improving the Vessel's

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condition in preparation for its domestic use, as reflected in the following:

a. Mr.Tajanlangit contracted a ship management company, Orophil Shipping Int'l. Co., for the Vessel's dry docking at the Herma Shipyard, be in (*sic*) noted that under the MOA the vessel was delivered without the need to dry dock; and

b. The Vessel's name was accordingly changed from M/V Coco Explorer 2 to M/V 7107 Islands Cruise;

8. The Vessel entered the Philippine territory without passing through a customhouse in violation of Section 1201 strongly implemented by Section 1206 of the TCCP;

9. Even assuming that its entry was for the purpose of repairs, the C&C Marine A/S failed to invoke any tax and duty exemption privilege for conditionally-free importations, Section 105-d of the TCCP; and

10. Records show that the Vessel docked at the Port of Manila (POM) in December 2007 without the necessary customs clearance.

All the foregoing circumstances combined prove that petitioner tried to evade compliance with the legal requirements of importation and payment of appropriate taxes and duties by making it appear that the Vessel's entry to the Philippine territory was merely for repairs. Prior to its arrival at the Port of Batangas, there was already an agreement between the parties to purchase the Vessel and its arrival thereat was already for purposes of delivery. In view of the fraudulent importation of the Vessel, Section 2530(f) and (m) of the TCCP applies, thus, justifying its forfeiture.

While it is true that repairs were made on the Vessel but they were done to prepare it for domestic use and only after Esteban Tajanlangit, Jr. became its owner through

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purchase. The alleged entry of the Vessel in the Philippine territory for repairs was but a scheme to evade the payment of appropriate taxes and duties to the Government. Even assuming that the Vessel's purpose for entering the Philippines was merely for repair, petitioner failed to observe the requirements of conditionally-free importation of articles brought into the Philippines solely for repair. When required, C&C Marine A/S's was unable to produce any documents required under Section 105(g) of the TCCP.

Respondent also opines that petitioner's sweeping conclusion that Section 1202 of the TCCP is not applicable in the instant case since the subject vessel is not cargo is flawed. The provision does not distinguish between vessels and other articles brought in for importation. In the case of *Secretary of Finance vs. Oro Maura Shipping Lines,*[9] the Supreme Court ruled that Section 1202 of the TCCP is still applicable to vessels especially when it is the very article to be imported.

Respondent likewise rejects petitioner's contention that the Authority to Acquire Vessel through Importation/Outright Purchase must first be secured from the MARINA before actual importation or purchase of foreign vessel may occur. The determination of when importation begins and ends, as well as when customs taxes and duties are to be paid, are not within the mandate and powers of the MARINA. It does not also follow that because the MARINA did not authorize the importation of a vessel, no importation occurred. Admittedly, the Vessel was registered with the MARINA, but the issue are the acts committed by petitioner prior to such registration which constitute fraudulent intent to avoid taxes and duties.

Anent the invocation of the presumption of regularity in the performance of official function, as the word suggests, it is just a presumption which can be overturned by contrary evidence upon review.

On April 3, 2013, the instant petition was submitted for decision after the parties filed their respective memoranda.[10]

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[9]593 SCRA 14 (2009).
[10]*En Banc* docket, pp. 435-436.

RULING OF THE COURT EN BANC

The Petition for Review has no leg to stand on.

There was importation when the subject Vessel entered the Port of Batangas on September 4, 2007.

Importation is defined as the act of bringing an article into the country from the outside.[11] It is completed once the taxable or dutiable commodity is brought within the limits of the port of entry.[12] Importation is not the making of entry of goods at the customhouse, but merely the bringing them into port.[13]

In connection with the foregoing definition, Section 1202 of the TCCP dictates the time when the importation begins and ends, thus:

> SECTION 1202. *When Importation Begins and Deemed Terminated.* — **Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein**. Importation is deemed **terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are**

[11] *Viduya vs. Berdiago*, 73 SCRA 553 (1976).
[12] *Jardeleza vs. People*, 481 SCRA 638 (2006).
[13] *United States vs. Lyman [U.S.]*, 26 Fed. Cas., 1024, 1028; *Perots vs. United States*, 19 Fed. Cas., 258; Words and Phrases, Volume IV, p. 3438.

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> **free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.** (*Boldfacing supplied*)

Thus, the act of importation commences from the time 1) the carrying vessel or aircraft enters the Philippine territory; and 2) the carrying vessel or aircraft unlades or intends to unlade the article or the goods in the Philippines. It is worth to note that mere intent to unload the article is sufficient to commence an importation. And "intent", being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts, and therefore can only be proved by unguarded expressions, conduct and circumstances generally.[14]

In the instant case, the article subject of importation was the Vessel itself - M/V Coco Explorer a.k.a. 7,107 Islands Cruise. Undeniably, the element of physical entry into the Philippine territory is present. It was never refuted that the Vessel entered the Philippine territory and docked at the Port of Batangas on September 4, 2007. The series of events following such arrival and the documents adduced during the trial both by petitioner and respondent unfolded the latter's real intention to make the Philippines the port of destination of the Vessel. The "intent to unload" the vessel when it entered the Philippine territory was plain to see as the Court in Division put it, thus:

> A review of the peculiar factual circumstances availing in this case will show that there was 'intent to unload' the vessel when it entered the Philippine territory.
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> According to petitioner, the subject Vessel entered the Philippines for purposes of repair. However, the same is not supported by the evidence on record. When it entered the Port of Batangas and during the entire time that it was anchored therein, no repair was actually started or done. If it

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[14]*Feeder International Line, PTE., LTD, et al. vs. Court of Appeals, et al.*, G.R. No. 94262, May 31, 1991.

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> was really the intention of C&C Marine A/S (then owner of the Vessel) to repair the vessel, repairs should at least have been started.
>
> On the contrary, the Vessel was sold to Mr. Esteban Tajanlangit, in representation of a corporation still to be formed (petitioner), who allegedly inspected the said Vessel twice in the previous years. Thereafter, the Vessel secured a clearance to sail to Mariveles, Bataan for repairs on November 27, 2007. And, as stated by Mr. Esteban Tajanlangit in his Judicial Affidavit, the Vessel was drydocked in Bataan and was brought to Manila for repairs. Notably, the repairs were done only when the Vessel was already owned by petitioner.
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> No sufficient evidence, documentary or testimonial, was submitted to substantiate petitioner's allegation that the Vessel entered the country only for repairs. Quite the reverse, the pieces of evidence presented by petitioner indicate that the Vessel was really intended to be delivered for purchase by Mr. Esteban Tajanlangit. The repairs done were to prepare the Vessel for its intended use in the Philippines.
>
> Thus, when the subject Vessel entered the Port of Batangas as an imported article to be purchased by petitioner, it is correspondingly subject to the provisions of Sections 100 and 1201 of the TCCP. (*Citations omitted*)

Petitioner's argument that Sections 1202 and 100 of the TCCP do not apply to vessels such as M/V Coco Explorer a.k.a. 7,107 Islands Cruise is evidently misplaced if not erroneous. Section 1202 makes no distinction as to its applicability. As correctly argued by respondent, Section 1202 does not distinguish between vessels and other articles or goods sought to be imported. Nor does it provide an

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exemption as regards it coverage. *Ubilex non distinguit nec nos distinguere debemos* – when the law does not distinguish, we should not distinguish.[15] Consequently, the Vessel, being the imported item itself is subject to taxes and duties as encapsulated in Section 100 of the TCCP which states as follows:

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

The pronouncement of the Supreme Court in the case of *Secretary of Finance vs. Oro Maura Shipping Lines,*[16] on the applicability of Section 1202 of the TCCP when the article sought to be imported is the vessel itself is instructive, thus:

> With the knowledge that the vessel was released under a re-export bond, the respondent should have known that this original entry was subject to specific conditions, among them, the obligation to guarantee the re-export of the vessel within a given period, or otherwise to pay the customs duties on the vessel. It should have known, too, of the conditions of the vessel's release under the re-export bond and of the state of Glory Shipping Lines status of compliance.
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> There was an original but incomplete importation by Glory Shipping Lines that the respondent could not have simply disregarded proceeds from knowledge of the vessel's history and the application of

[15] *PNOC vs. Court of Appeals, et al.*, 457 SCRA 32 (2005).
[16] G.R. No. 156946, July 15, 2009.

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> the relevant law. In this respect, Section 1202 of the TCCP provides:
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> > Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.
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> In order for an importation to be deemed terminated, the payment of the duties, taxes, fees and other charges of the item brought into the country must be in full. For as long as the importation has not been completed, the imported item remains under the jurisdiction of the BOC. From the perspective of process, the importation that originally started with Glory Shipping Lines was therefore never completed and terminated, so that the respondent's present importation is merely a continuation of that original process.

Contrary to petitioner's theory, Title III of the TCCP which pertains to "Vessels and Aircrafts in Foreign Trade" is not applicable. The vessels under such provision are those engaged in foreign trade; or those used to ship and carry cargo from one port to another. This element is certainly lacking in the instant case. M/V Coco Explorer is not a cargo ship but a cruise ship.

The Court *En Banc* is also not convinced that the Vessel lawfully entered the Philippine territory on September 4, 2007 solely for purposes of repair. Apart from the letter dated August 31, 2007 sent by C&C Marine A/S representative Consuelo Pausanos to the Collector of Port of

Batangas, no evidence was adduced to substantiate this claim. Intriguingly, the letter specified the Port of Batangas as the place for the repair but none was made on the vessel while anchored at that Port. Repairs were done at Herma Shipyard in Mariveles, Bataan almost two months after its arrival and after it was purchased and paid by Mr. Tajanlangit, Jr. Moreover, the MOA [17] executed on September 24, 2007, or twenty (20) days from arrival of the Vessel, specifically stated that the Vessel shall be delivered without dry docking.

Significantly, the record is pregnant with information validating the conclusion that the Philippines was the final destination of the Vessel. The voyage of the Vessel from Thailand was to effect its delivery to petitioner, pursuant to the parties' agreement entered into long before the arrival of the Vessel at the Port of Batangas. The MOA specifically paragraph 5(b) thereof indicates and confirms that the purpose of the voyage to the Philippines was for its delivery to petitioner, which was but a logical part of the agreement, viz.:

> 5. Notices, Time and place of delivery.
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> a) xxx
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> b) The **Vessel shall be delivered and taken over safely afloat at a safe and accessible berth or anchorage in the Seller's option at the Port of Batangas, Philippines**. xxx (*Emphasis supplied*)

Also paragraph 4(a) thereof belies petitioner's contention that decision to purchase the vessel came only after it entered Philippine territory. Mr.Tajanlangit himself admitted that he inspected the Vessel in Thailand twice sometime in 2006 preparatory to purchase. After such inspection, Mr.Tajanlangit accepted the sale of the Vessel which was outright and definite, as stated in the MOA. In other words, after such inspection, the contract of sale was already perfected. For the parties, it was a done deal

[17] Exhibit "I", *rollo*, pp. 185-192.

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subject only to the execution of Bill of Sale upon full payment of the agreed purchase price. Paragraph 4(a) of the MOA reads:

> 4. Inspections
>
> ~~a) The buyers have inspected and accepted the Vessel's classification records.~~
>
> The **buyers have ~~also~~ inspected the Vessel at Sriracha harbour, Thailand and have accepted the Vessel <u>following this inspection and the sale is outright and definite</u>**, subject only to the terms and conditions of this Agreement. xxx (*Emphases supplied*)

The MOA merely put into writing the terms and conditions of the sale transaction which involved a huge amount of investment, part of which was paid barely five (5) days after the arrival of the Vessel, or on September 9, 2007. To be sure, it was not a spur of the moment decision but one that required long deliberation. The MOA and the series of events that occurred after such arrival, reflect a well-thought scheme to import the Vessel but escape payment of duties and taxes for such importation.

Petitioner's claim that the MARINA's approval is required before a vessel may be lawfully imported and before duties and taxes accrue is equally infirm. To follow the notion is to attribute powers to the MARINA which are not within its province.

The order of forfeiture is in accordance with law and jurisprudence.

Aside from the payment of duties and taxes, Section 1201 of the same law requires that all imported articles shall be entered through a customhouse at a port of entry, whether they are subject to duties or otherwise, to wit:

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> SECTION 1201. *Article to be Imported Only Through Customhouse.* — **All articles imported** into the Philippines whether subject to duty or not shall be entered through a customhouse at a port of entry.

Thus, the law imposes the obligation upon **all** imported articles to pass through customhouse and to pay taxes and duties unless otherwise exempt by law from such payment. Admittedly, this legal requirement was not complied with by petitioner, who to date still insists that the Vessel need not pass through a customhouse at the time it entered the Philippines on September 4, 2007 it being a foreign ship. Contrary to petitioner's protestation, the Certificate of Approval of Conversion, allegedly issued by the Collector of the Port of Subic on February 17, 2009 or more than seventeen (17) months from such arrival, cannot take the place of the specific requirement of Section 1201 of the TCCP. Likewise admitted for the same reason was the fact that petitioner did not pay taxes and duties for the importation of the Vessel. The record reveals that from the time the Vessel docked at the Port of Batangas up November 15, 2007, when the parties executed the Protocol of Delivery and Acceptance,[18] there was no attempt on the part of petitioner to comply with the legal formalities and regulations of the BOC. All these combined with the fraud that accompanied the said illegal importation justify the forfeiture of the Vessel pursuant to Section 2530(l)(1) of the TCCP.

The Court En Banc is one with the Court in Division when it ruled, thus:

> The subject Vessel was imported without passing through a customhouse, and without proper documentation and payment of applicable customs taxes, duties and charges. Likewise, it entered the Port of Manila without necessary customs

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[18] Exhibit "J", Rollo, p. 194.

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clearance. Therefore, it was imported contrary to law.

With respect to the findings of fraud, actual or intentional fraud consists of deception willfully and deliberately done or resorted to in order to induce another to give up some right. It must amount to intentional wrong-doing with the sole object of avoiding the tax.

At first glance, there is nothing wrong with a foreign vessel entering the Philippine ports for repair and after twenty days became the subject of a Memorandum of Agreement for its purchase by a Filipino. Such can happen in business scenarios.

However, what is glaringly noticeable and which led this Court to believe that there was intent to deprive the government of taxes due on the importation of the Vessel was the series of events that transpired prior to the seizure of the Vessel.

In addition to the fact that the 'alleged intent to repair' was defeated by the evidence on hand, it bears stressing that notwithstanding the purchase of the vessel in November 2007, there was no attempt to comply with the legal formalities and regulations of the MARINA and the BOC.

On January 21, 2008, the Chief of the Run After the Smugglers Group of the Bureau of Customs issued a subpoena on the Vessel, seeking explanation on the presence of the Vessel in Philippine territory. Petitioner filed an application for an authority to acquire the Vessel with the MARINA on March 3, 2008, which to this Court is a mere afterthought and as a result of the subpoena issued by the RATS Group.

Its authority to acquire was approved by the MARINA on May 6, 2008. Then, while its papers and registration were being processed with the MARINA, it registered itself with the Subic Bay Freeport Zone and was issued the corresponding Certificate of Registration and Tax Exemption on January 22, 2009.

On February 4, 2009, petitioner finally executed an Import Entry and Internal Revenue Declaration (IEIRD), declaring itself as the importer of the Vessel but with a notation 'tax and duty free importation under RA 7227, as amended.'

It follows that it was only when petitioner was issued the said Certificate that it decided, under the assumption that it is free from taxes, to declare its importation of the Vessel; which is almost two years after the purchase of the Vessel.

The aforesaid events would lead a reasonable man to conclude that they were meant to circumvent the requirement of paying duties over the imported Vessel. They are badges of fraud on the part of petitioner. It appears that the events were planned to prevent petitioner from paying the import duties due on the Vessel when it entered the Philippines in 2007.

Mr. Tajanlangit justifies the non-payment of customs taxes and duties even after the purchase of the Vessel with the available tax incentives by virtue of its registration with Philippine Economic Zone Authority and Subic Bay Freeport Zone. But then, the purchase was made in 2007; while the Certificate of Registration and Tax Exemption from Subic Bay Freeport Zone was given only in 2009. Between 2007 and 2009, there is no certificate that petitioner may use. Be that as it may, the Certificate issued by Subic Bay Freeport Zone provides that exemption of petitioner from importation duties covers only 'raw materials, capital equipment, and

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> household and personal items for use solely within the Subic Bay Freeport Zone.'
>
> While it is true that the fraud contemplated by law is actual and not constructive, this Court also recognizes the principle that fraud is a state of mind, it need not be proved by direct evidence but may be inferred from the circumstances of the case. (*Citations omitted*)

WHEREFORE, the Petition for Review filed on July 6, 2012, by petitioner 7107 Islands Shipping Corporation is hereby **DENIED,** for lack of merit. Accordingly, the assailed Decision and Resolution dated March 6, 2012 and June 6, 2012, respectively, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

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