REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

7107 ISLANDS SHIPPING CORPORATION,
Petitioner,

- versus -

DEPARTMENT OF FINANCE,
Respondent.

C.T.A. EB NO. 912
(C.T.A. Case No. 7955)

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 28 2015

x- 4:15 p.m. - x

RESOLUTION

For adjudication is the *Motion for Reconsideration* [1] posted by petitioner 7107 Islands Shipping Corporation on June 5, 2015, to which respondent Department of Finance filed *Comment* on August 18, 2015, assailing the Resolution[2] promulgated on May 20, 2015 allowing the public auction of M/V 7107 Islands Cruise through sealed bidding. The dispositive portion of the assailed Resolution reads:

> **WHEREFORE**, the *Motion for Authorization to Sell M/V 7107 Islands Cruise Through Public Auction* filed by respondent the Department of Finance on October 28, 2014, is hereby **GRANTED**.
>
> **SO ORDERED.**

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[1] *En Banc* docket, Volume II, pp. 1010-1016.
[2] *Id.*, pp. 1003-1009.

Petitioner claims that the Court erred in finding that the conditions imposed by petitioner in connection with the conduct of public auction are contrary to law. It argues that Customs Administrative Order (CAO) No. 10-07, in relation to Section 2601 of the Tariff and Customs Code of the Philippines (TCCP), is not applicable to disposition of vessels under customs custody given that vessels are treated as *sui generis* such that they are subject to entirely different set of laws and regulations from those applied to imported articles. Further, accepted international practice allows public auctions of ships through open bidding or *viva voce*. And since the subject of the public sale - M/V 7107 Islands Cruise - is a former Panamanian ship, international practice dictates that the public auction be conducted by open bidding or *viva voce*.

Petitioner believes that public auction of the ship through an open bidding or *viva voce* is to the best interest of all parties concerned since public auction by sealed bidding does not guarantee immediate sale or disposition of the ship at the best possible price. Allegedly, failed bidding is not remote, in fact, highly probable, in sealed bidding. Moreover, despite measures under the CAO, there is no guaranty of transparency in the conduct of the bids.

In rejecting petitioner's stance, respondent counters that there is nothing in CAO No. 10-2007 and/or the Tariff and Customs Code of the Philippines (TCCP) which expressly removes the subject vessel M/V 7107 Islands Cruise from its scope and jurisdiction.

CAO No. 10-2007 or the *Rules and Regulations in the Conduct of Public Auction and Negotiated Sale* covers the disposition of articles under customs custody as enumerated in Section 2601 of the TCCP, as amended.[3] M/V 7107 Islands Cruise was seized by virtue of a Warrant of Seizure and Detention and eventually forfeited in favor of the Government pursuant to respondent's 1st Indorsement dated September 17, 2008.

Respondent likewise rejects petitioner's contention that *vessels are treated sui generis, and are subject to entirely*

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[3] Section 1, Customs Administrative Order No. 10-2007.

different set of laws and regulations from those applied to imported articles. Allegedly, "ships and vessels, under Philippine law, are not *sui generis* but are treated as *in rem"*. Further, "forfeiture proceedings are in the nature of proceedings *in rem* and are directed against the *res"*, which in this case, is the vessel itself.

Respondent also believes that petitioner's reliance on the *Draft International Convention on Foreign Judicial Sales of Ships and their Recognition*, otherwise known as the *Beijing Draft*, is misplaced considering that: (1) the *Beijing Draft*, as its title suggest, is merely a draft, hence, not yet effective; (2) petitioner has not shown that the Philippines is a State-Party to it; (3) the *Beijing Draft* does not provide the procedure for the sale of the vessel, whether through the system of open bidding or *viva voce*, as petitioner suggests, and (4) assuming *arguendo* that the Philippines becomes a signatory to the *International Convention on Foreign Judicial Sales of Ships and their Recognition*, and that the same is already enforce, the fact that international law has been made part of the law of the land does not imply the primacy of international law over national law in the municipal sphere per doctrine of incorporation.

Lastly, respondent maintains that the public auction of M/V 7107 Islands Cruise cannot be conducted through open bidding considering that public auction conducted by the Bureau of Customs shall be through a sealed bid system pursuant to Section 8[4] of CAO No. 10-2007. According to respondent, it is only when clustering occurs that an open bidding is done as provided under Section 9[5] of CAO No. 10-2007 which is not obtaining in the present case.

Petitioner's *motion* must fail.

First, let it be stressed that petitioner neither assail the disposition of the vessel through public auction nor the

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[4] *Infra.*

[5] ***Section 9. Clustering System***. Clustering occurs when the difference between the highest and second highest bid is within ten percent (10%) of the highest bid. In such cases, an open bidding shall be conducted among the bidders of the particular sale lot who are present with the highest bid serving as the new floor price. Only bids raised by three percent (3%) more than the new floor price shall be considered and the highest bid in open-bidding shall be declared as the winner. Otherwise, the highest sealed bid shall be declared as the winner.

authority of respondent to dispose the same. It is only questioning the manner by which the public sale shall be conducted. Petitioner wants that subject vessel M/V 7107 Island Cruise be sold through open-bidding or *viva voce* alleging that it is the internationally accepted practice in ship auctions and that it is to the best interest of all the parties concerned.

However, conducting the public auction of the subject vessel through open-bidding or *viva voce* cannot be done without violating CAO No. 10-2007, which governs the *Rules and Regulations in the Conduct of Public Auction and Negotiated Sale*, specifically Section 8 thereof which provides:

> Section 8. ***Sealed Bid System***. The **<u>sealed bids</u>** shall be submitted and opened in public by the Auction Committee at a time, date and place specified in the Notice of Auction Sale. The highest bid shall be declared as the winner except when clustering occurs. (*Emphases supplied*)

As respondent correctly observed, CAO No. 10-2007 **<u>covers the disposition of articles under customs custody as enumerated in Section 2601</u>** of the TCCP,[6] to wit:

> "SECTION 2601. ***Property Subject to Sale***. — Property in customs custody shall be subject to sale under the conditions hereinafter provided:
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> a. Abandoned articles;
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> b. Bonded articles entered under warehousing entry not withdrawn nor the duties and taxes paid thereon within the period prescribed by law;
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> c. Articles for which import entry has been filed but have not been claimed within fifteen days thereafter; Provided,

[6] Section 1, Customs Administrative Order No. 10-2007.

that in justifiable cases, or when public interest so requires, the Collector may, in his discretion, grant an extension of not more than fifteen days;

d. **Seized property**, other than contraband, after liability to sale shall have been established by proper administrative or judicial proceedings in conformity with the provisions of this Code.

e. Any article subject to a valid lien for customs duties, taxes or other charges collectible by the Bureau of Customs, after the expiration of the period allowed for the satisfaction of the same." (*Emphasis supplied*)

As stated earlier, M/V 7107 Islands Cruise was forfeited in favor of the government by virtue of respondent's 1st Indorsement dated September 17, 2008. Evidently, subject vessel is well within the coverage of CAO No. 10-2007.

Anent petitioner's insistence that open-bidding will be in the best interest of all the parties concerned, suffice it to say that petitioner merely cited several possibilities, mostly remote. Thus, the Court agrees with respondent that petitioner's arguments are highly speculative devoid of any factual and legal bases.

WHEREFORE, petitioner's *Motion for Reconsideration* dated June 5, 2015, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice