Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MARINE FUELS PHILIPPINES, INC.,
Petitioner,

-versus-

SECRETARY OF FINANCE, representing the Department of Finance, and the COMMISSIONER OF CUSTOMS, representing the Bureau of Customs,
Respondents.

CTA Case No. 8330

x---x

CHELSEA SHIPPING CORPORATION,
Petitioner,

-versus-

THE HON. SECRETARY OF FINANCE, representing the, Department of Finance, and the COMISSIONER OF CUSTOMS, representing the Bureau of Customs,
Respondents.

CTA Case No. 8332

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
APR 29 2014
____
2:10 p.m.

x---x

DECISION

CASANOVA, *J.:*

Before this Court are consolidated cases filed by petitioners Marine Fuels Philippines, Inc. and Chelsea Shipping Corporation praying for this Court to reverse and nullify the 2nd Indorsement dated

July 28, 2011 issued by the Secretary of Finance and the 3rd Indorsement dated July 29, 2011 of the Commissioner of Customs; and to reinstate the Decision dated June 30, 2011 of the Commissioner of Customs finding that the subject cargo allegedly composed of 220 Metric Tons (MT) of Industrial Diesel Oil (IDO), more or less, and Marine Tugboat (M/T) Chelsea Enterprise, should be released; and, to permanently enjoin respondents Secretary of Finance and Bureau of Customs (BOC), their subordinates, personnel and agents, or any other person from further detaining and forfeiting the subject cargo and M/T Chelsea Enterprise in favor of the government.

The facts, as culled from the records of these cases are as follows:

Petitioner Marine Fuels Philippines Inc. (MFPI), is a domestic corporation engaged in brokering and trading, brokering and dealing in all kinds of petroleum products on wholesale/retail basis to local and foreign vessels and/or companies.[1]

Petitioner Chelsea Shipping Corporation (CSC), is a domestic corporation engaged in maritime trade in the conveyance or carriage of petroleum products, goods, wares, and merchandise of every kind and description including but not limited to general cargo handling, loading, transporting, discharging, and storing, over oceans, seas, lakes, rivers, canals, bays, harbors, and other waterways in the Philippines.[2] It owns M/T Chelsea Enterprise pursuant to the Certificate of Ownership[3] issued by Maritime Industry Authority (MARINA) on October 26, 2009.

Respondent Secretary of Finance is the head of the Department of Finance, a government agency tasked, among others, to exercise supervision and control over respondent Bureau of Customs.[4]

Respondent Department of Finance (DOF), is an instrumentality of the government of the Republic of the Philippines tasked to, among others, exercise supervisory authority over respondent BOC, including but not limited to seizure proceedings which are automatically elevated to it for review pursuant to Section 2313 of the Tariffs and Customs Code of the Philippines (TCCP).[5]

---

[1] Exhibit "B".
[2] Exhibit "JJJ-1-CSC".
[3] Exhibit "LLL-CSC".
[4] Par. 2.2, Parties, Petition for Review, CTA Case No. 8330 Docket, Vol. I, p. 8.
[5] Par. 2.3, Parties, Petition for Review, CTA Case No. 8330 Docket, Vol. I, pp. 8-9.

Respondent Bureau of Customs (BOC) is an instrumentality of the government of the Republic of the Philippines which, among others, exercises original jurisdiction over seizure and forfeiture cases under the TCCP, such as in the instant case.[6]

Respondent Commissioner of Customs (COC) is the Commissioner of respondent BOC, a government agency tasked to, among others, collect customs duties, taxes, fees and other charges under the TCCP and other related laws, rules regulations. With respect to exactions under the National Internal Revenue Code (NIRC) such as excise taxes on imported goods, respondent BOC merely serves as a collecting agent of the Bureau of Internal Revenue (BIR).[7]

On January 17, 2011, M/T Chelsea Enterprise, owned by petitioner CSC and chartered by petitioner MFPI, was apprehended by the BOC's Run After The Smugglers (RATS) Group while unloading its oil cargo from its fuel compartments to M/T China Venture at Pier 6, North Harbor, Berth 5, Shipway 5, in the Port of Manila.

During the delivery of IDO from M/T Chelsea Enterprise to M/T China Venture, respondent BOC's RATS Group, purportedly acting upon "derogatory information", boarded said vessels and presented the Letter dated January 17, 2011[8] of Deputy Commissioner Atty. Gregorio Chavez addressed to Atty. Leopoldo Biscocho, North Harbor Port Manager of the Philippine Ports Authority, to hold in abeyance the issuance of any exit permit to the two (2) vessels until respondent BOC's RATS Group had the chance to verify the legality of the import and/or export documents relating to the subject cargo contained in the said vessels.

Upon apprehension, Chief Mate Elvis L. Pagalilauan of M/T Chelsea Enterprise presented the Bunkering Permit dated January 14, 2011 in favor of M/T China Venture.[9]

Thereafter, Deputy Commissioner Chavez issued the 1st Indorsement dated January 19, 2011 forwarding to the District Collector of MICP, Engr. Ricardo Belmonte, the request for the issuance of a *Warrant of Seizure & Detention* against the subject cargo as well as against M/T Chelsea Enterprise and M/T China Venture. The warrant was requested in view of the alleged violation of Section 2530 (a), (b), a

[6] Par. 2.4, Parties, Petition for Review, CTA Case No. 8330 Docket, Vol. I, p. 9.
[7] Par. 2.5, Parties, Petition for Review, CTA Case No. 8330 Docket, Vol. I, p. 9.
[8] Exhibit "SSS".
[9] Exhibit "PPPP".

(f), (k), (l), paragraphs 3, 4 & 5 in relation to Section 3602 of the TCCP for the importation of bunker oil on board M/V Chelsea Enterprise which was transferred to M/T China Venture, a domestic vessel, instead of M/V Nashwan, a foreign vessel, pursuant to the bunkering permit issued by the Port Operation Service (POS).[10]

On January 20, 2011, the District Collector of Customs issued the *Warrant of Seizure and Detention* against M/T Chelsea Enterprise, M/T China Venture and the cargo "220,000.00 liters of Bunker Oil".[11]

On January 31, 2011, petitioner MFPI filed a *Motion to Recall Warrant of Seizure and Detention* dated January 27, 2011.[12]

On February 2, 2011, Pinamungahan Towage Corporation, the owner of M/T China Venture, requested the District Collector to allow M/T China Venture to pump the IDO it already received back to M/T Chelsea Enterprise since the former's ventilator blowers could not operate on a 24-hour basis and, therefore, the fuel oil could possibly build up some fumes if the same is not unloaded as soon as possible. Further, due to its capacity, M/T China Venture may not be able to hold on to the full volume of the cargo unlike M/T Chelsea. Without any objection from respondent BOC's Law Division, the request of Pinamungahan Towage was granted by the District Collector.[13]

The District Collector issued an Order on February 8, 2011 recalling the warrant against M/T China Venture and ordering its release while continuing the seizure proceedings against the vessel M/T Chelsea Enterprise and the subject cargo.[14]

The said Order was affirmed by the COC and, thereafter, elevated to respondent Secretary of Finance for automatic review. Respondent Secretary of Finance affirmed the aforesaid release order on the ground that there was no clear showing that the M/T China Venture committed the alleged underlying violations of the TCCP or that its owner or agent was privy to the supposed transaction between CG Veritas and Bergen Bunkers-Norway and between the latter and MFPI.[15]

---

[10] Exhibit "TTT".
[11] Exhibit "UUU".
[12] Exhibit "VVV".
[13] Exhibit "VVV".
[14] Exhibit "VVV".
[15] Exhibit "VVV".

While M/T China Venture was released, the hearing of the seizure cases against M/T Chelsea Enterprise and the subject cargo belonging to petitioner MFPI continued.[16]

After all parties have rested their case, the District Collector issued its Order dated April 12, 2011, ordering the release of the vessel M/T Chelsea Enterprise and the subject cargo to petitioners CSC and MFPI.[17]

Upon review, respondent BOC's Legal Division issued a Disposition Form dated May 11, 2011 with its recommendation affirming the Order dated April 12, 2011 of the District Collector[18], which was, likewise, affirmed by respondent COC in a Decision rendered on June 30, 2011.[19]

On the same day, respondent COC issued the 1st Indorsement dated June 30, 2011 forwarding the case to respondent Secretary Finance for automatic review pursuant to Section 2313 of the TCCP.[20]

Subsequently, respondent Secretary of Finance, acting through Undersecretary Carlo A. Carag of the Revenue Operations and Legal Affairs Group, issued the questioned Decision reversing and setting aside the Order dated April 12, 2011 of the District Collector, as affirmed by respondent COC on June 30, 2011, and ordered the forfeiture of M/T Chelsea Enterprise and the subject cargo.[21]

In compliance with the questioned Decision, respondent COC issued the 3rd Indorsement dated July 29, 2011 forwarding the case to the District Collector for forfeiture and M/T Chelsea Enterprise and the subject cargo in favor of the government and to dispose the same immediately in accordance with Section 2601 of the TCCP.[22]

On August 19, 2011 and August 25, 2011, petitioner MFPI and CSC, respectively, received a copy of the 3rd Indorsement of the respondent COC dated July 29, 2011[23] and attached therewith is the questioned Decision of respondent Secretary of Finance ordering the

---

[16] Exhibit "VVV".
[17] Exhibit "WWW".
[18] Exhibit "VVV".
[19] Exhibit "XXX".
[20] Exhibit "VVV".
[21] Exhibit "VVV".
[22] Exhibit "YYY".
[23] Exhibit "YYY".

immediate forfeiture of the cargo of supposedly 220,000.00 liters, more or less, of bunker oil of petitioner MFPI and M/T Chelsea Enterprise.

Accordingly, petitioners MFPI and CSC filed their respective Petitions for Review before this Court docketed as CTA Case No. 8330 on September 5, 2011 and CTA Case No. 8332 on September 9, 2011, respectively.

On September 19, 2011, petitioner MFPI filed an *Urgent Verified Motion for the Issuance of a Suspension Order with a Prayer for Immediate Issuance of a Temporary Restraining Order.*[24]

During the presentation of petitioner MFPI's exhibit on the *Urgent Verified Motion*, petitioner MFPI, likewise, filed an *Urgent Motion (To Declare Respondents in Default and To Allow Petitioner to Post Bond Under Section 6, Rule 10 of the Revised Rules of the Honorable Court)*[25] on November 10, 2011, praying that: (1) respondents be declared in default; (2) that petitioner MFPI be allowed to post a bond in a reasonable amount as may be determined by the Court to secure the immediate release of the seized vessel M/T Chelsea Enterprise and its seized cargo consisting of 220 metric tons of Industrial Diesel Oil (IDO) and (3) upon posting and approval of said bond, the Court to order the respondents Secretary of Finance, DOF, COC, BOC, their officers, subordinates, personnel and agents, and/or any other person acting on their behalf or authority to immediately release the vessel M/T Chelsea Enterprise and its cargo.

On November 21, 2011, a Resolution was issued by this Court consolidating CTA Case No. 8332 with CTA Case No. 8330.[26]

In view of the consolidation of the cases, the Court denied petitioner MFPI's *Urgent Motion to Declare Respondents In Default* during the hearing held on November 24, 2011 and upon motion, granted respondents a final and non-extendible period of thirty (30) days within which to file the Consolidated Answer.[27]

Accordingly, respondents filed their *Consolidated Comment*[28] on November 29, 2011 interposing the following arguments:

---

[24] CTA Case No. 8330 Docket, Vol. II, pp. 714-760.
[25] CTA Case Nos. 8330, Docket, Vol. III, pp. 1480-1492.
[26] CTA Case No. 8332 Docket, Vol. III, pp. 1496-1498.
[27] CTA Case Nos. 8330 & 8332 Docket, Vol. IV, p. 1572.
[28] CTA Case Nos. 8330 & 8332 Docket, Vol. IV, pp.1606-1632.

1. Respondent Secretary of Finance properly found the vessel M/V Chelsea Enterprise and its oil cargo liable for seizure and forfeiture under the TCCP;

2. The vessel M/V Chelsea Enterprise is subject to forfeiture notwithstanding ownership thereof by CSC.

Petitioner MFPI and CSC filed their respective replies to the *Consolidated Comment* on December 19, 2011.

Petitioner MFPI's Reply [Re: Consolidated Comment dated 25 November 2011][29] contains the following arguments:

> "1. Petitioner MFPI has fully discharged the burden of proof to show the illegality of the seizure and forfeiture of the subject cargo and the vessel, M/T Chelsea Enterprise, through overwhelming and unrebutted evidence on record presented before the Honorable Court.
>
> > A. Respondents did not have any iota of proof that the subject cargo is an imported article within the purview of the TCCP at the time of the seizure. Thus, there could have not been any probable cause for the institution of seizure proceedings against it and respondent BOC had no jurisdiction to begin with.
> >
> > B. As admitted by respondent BOC, the burden of proof to show that the subject cargo is not imported has been sufficiently discharged by petitioner MFPI.
>
> 2. Respondent Secretary of Finance gravely erred in issuing the 2nd Indorsement dated July 28, 2011 (The 'Questioned Decision'), considering that:
>
> > A. Respondent BOC has no jurisdiction to seize and forfeit M/T Chelsea Enterprise

[29] CTA Case Nos. 8330 & 8332 Docket, Vol. IV, pp.1671-1734.

and the subject cargo since there was <u>no importation</u> to speak of in the subject transaction. As correctly held by respondent BOC, Petron Corporation ('Petron'), as the importer of the crude oil from which the subject cargo was processed and/or manufactured, duly paid the taxes, duties and fees thereon upon importation of the crude oil from which the subject cargo was produced.

B. The unrebutted evidence shows that the urgent delivery made by petitioner MFPI to Marine Tugboat China Venture ('M/T China Venture') occasioned by operational constraints is clearly a domestic sale of fuel for which all applicable taxes and fees were duly paid; thus, as correctly held by respondent BOC, the government was not deprived of any lawful revenue."

On the other hand, petitioner CSC's *Reply (Re: Consolidated Comment dated November 25, 2011)*[30] contains the following arguments:

"I. Contrary to respondents' claim, Sections 2530 (A) and (K), in relation to 3602 of the Tariff and Customs Code of the Philippines (TCCP) do not apply to petitioner CSC and its vessel, M/T Chelsea Enterprise.

A. There being no importation or exportation of unlawful articles in the instant case, Section 2530 (A) of the Tariff and Customs Code of the Philippines ('TCCP') is inapplicable.

B. Section 2530 (K) of the TCCP is likewise inapplicable considering that Marine Fuels Philippines, Inc. ('MFPI') has absolute control over M/T Chelsea Enterprise and its crew under the terms

---

[30] CTA Case Nos. 8330 & 8332 Docket, Vol. IV, pp.1740-1760

of the Time Charter Party Agreement ('Charter Agreement').

II. Respondents reliance on *Commissioner of Customs vs. Court of Tax Appeals and Jose Pascual*, 138 SCRA 581 (1985), is misplaced as said case is not applicable to the case at bar."

After the filing of respondents' *Comment-Opposition* (on the Motion to Allow Petitioner to Post Bond under Section 6, Rule 10 of the Revised Rules of the Honorable Court filed by Petitioner Marine Fuels Philippines, Inc. dated June 14, 2011)[31] on December 27, 2011 and petitioner MFPI's *Reply* [Re: (Comment-Opposition (on the Motion to Allow Petitioner to Post Bond under Section 6, Rule 10 of the Revised Rules of the Honorable Court filed by Petitioner Marine Fuels Philippines, Inc. dated June 14, 2011) dated 01 December 2011][32]on December 12, 2011, the *Urgent Motion to Allow Petitioner to Post Bond* was subsequently denied as per this Court's Resolution dated January 10, 2012.[33]

Petitioner MFPI continued with the presentation of its evidence on its *Urgent Verified Motion for Suspension* and subsequently filed petitioner MFPI's *Formal Offer of Evidence* on September 30, 2011 in support of its prayer for the issuance of a suspension order.

Subsequently, Exhibits "A-SO" to "III-1-SO" were admitted as part of the evidence for the petitioner on the *Urgent Verified Motion for Suspension* as per the Court's *Resolutions* dated December 9, 2011[34] and March 13, 2012[35].

On the other hand, respondents manifested during the hearing held on January 18, 2012 that they will not be presenting evidence.[36]

After the submission of respondents' *Memorandum* through registered mail on January 30, 2012, petitioner CSC's *Reply-Memorandum (to the Memorandum filed by Respondents dated 24 January 2012)* on February 22, 2012, and petitioner MFPI's *Reply Memorandum [Re: Memorandum dated 24 January 2012]* filed on

[31] CTA Case Nos. 8330 & 8332 Docket, Vol. IV, pp. 1578-1591.
[32] Ibid, pp. 1638-1666.
[33] CTA Case Nos. 8330 & 8332 Docket, Vol. IV, pp. 1788-1797.
[34] CTA Case Nos. 8330 & 8332 Docket, Vol. IV, pp. 1633-1635.
[35] CTA Case Nos. 8330 & 8332 Docket, Vol. V, pp. 2037-2039.
[36] CTA Case Nos. 8330 & 8332 Docket, Vol. IV, pp. 1809-1810.

February 23, 2012, the Court issued a Resolution dated April 4, 2012 denying the *Urgent Verified Motion for the Issuance of Suspension Order.*

Thereafter, the case was set for *Pre-Trial Conference* on May 24, 2012.[37] Accordingly, petitioners MFPI and CSC's *Pre-Trial Briefs* were filed on May 21, 2012[38] while *Respondents' Pre-trial Brief* was filed on May 18, 2012.[39]

On July 26, 2012, the Court issued the *Pre-Trial Order*, which, among others, deemed the pre-trial terminated.[40] The *Pre-Trial Order* was subsequently amended on September 21, 2012.[41]

During trial, petitioner MFPI presented and formally offered Exhibits "A" to "PPPP"[42] which were admitted as part of its documentary evidence as per this Court's *Resolutions* dated March 1, 2013[43] and August 7, 2013[44].

Petitioner CSC likewise presented and formally offered Exhibits "A-CSC" to "IIII-CSC"[45] which were admitted as part of its documentary evidence as per this Court's *Resolution* dated August 7, 2013.[46]

On the other hand, respondents manifested and moved that they be excused from presenting evidence, which was noted and granted in this Court's *Resolution* dated May 27, 2013.[47]

Considering petitioner MFPI's *Memorandum* filed on September 12, 2013[48], petitioner CSC's *Memorandum* filed on September 26, 2013[49] and respondents' *Memorandum* filed on September 19, 2013[50], the case was submitted for decision.[51]

---

[37] Notice of Pre-Trial Conference issued on April 11, 2012, CTA Case Nos. 8330 & 8332 Docket, Vol. V, p. 2059.
[38] CTA Case Nos. 8330 & 8332 Docket, Vol. V, pp. 2071-20100 and 2101-2119.
[39] CTA Case Nos. 8330 & 8332 Docket, Vol. V, pp. 2060-2070.
[40] CTA Case Nos. 8330 & 8332 Docket, Vol. V, pp. 2209-2216.
[41] CTA Case Nos. 8330 & 8332 Docket, Vol. V, pp. 2281-2282.
[42] Formal Offer of Evidence filed on February 15, 2013, CTA Case Nos. 8330 and 8332, Docket, Vol. VI, pp. 2522-2574.
[43] CTA Case Nos. 8330 & 8332 Docket, Vol. VI, pp. 2765-2767.
[44] CTA Case Nos. 8330 & 8332 Docket, Vol. VII, pp. 3219-3224.
[45] CTA Case Nos. 8330 & 8332 Docket, Vol. VI, pp. 2890-2939.
[46] CTA Case Nos. 8330 & 8332 Docket, Vol. VII, pp. 3219-3224.
[47] CTA Case Nos. 8330 & 8332 Docket, Vol. VII, pp. 3173-3174.
[48] CTA Case Nos. 8330 & 8332 Docket, Vol. VII, pp. 3230-3413.
[49] CTA Case Nos. 8330 & 8332 Docket, Vol. VII, pp. 3450-3565.
[50] CTA Case Nos. 8330 & 8332 Docket, Vol. VII, pp. 3421-3449.
[51] Resolution dated October 1, 2013, CTA Case Nos. 8330 & 8332 Docket, Vol. VII, pp. 3566-4567.

Based on the Pre-Trial Briefs submitted by the parties, the Court, in its Pre-Trial Order dated July 26, 2012, stated the following issues for disposition to wit[52]:

"A. Petitioner MFPI submitted the following issues:

Legal Issues

1. Whether or not there is a violation of Section 2530 (a), (b), (f), (k), (l), paragraphs 3, 4 and 5, in relation to Section 3602 of the TCCP, to warrant the seizure and forfeiture of the Subject Cargo and the vessel M/T Chelsea Enterprise;

2. Whether or not respondent BOC has jurisdiction to seize and forfeit M/T Chelsea Enterprise and the Subject Cargo;

3. Whether or not the alleged failure to present the import documents of the Subject Cargo upon inspection of the vessel, without any evidence presented by the respondents that the Subject Cargo were actually imported, constituted probable cause to institute seizure proceedings as provided for under Section 2535 of the TCCP and can support the subsequent forfeiture of the Subject Cargo and the vessel M/T Chelsea Enterprise despite evidence proving that there is no importation involved in this case;

4. Whether or not the Subject Cargo is subject to excise tax under Section 148(i) of the NIRC, as amended by RA 9337 and tariff duties;

5. Whether or not the circumstances in this case caused revenue losses on the part of the government and how much.

Factual Issues

[52] Pre-Trial Order, CTA Case Nos. 8330 & 8332, Docket, Vol. V, pp. 2211-2212.

1. Whether or not the Subject Cargo was imported;

2. Whether or not the Subject Cargo was locally obtained by petitioner MFPI from Petron Corporation at its Bataan Refinery;

3. Whether or not there is a valid charter agreement between petitioner MFPI and CSC for M/T Chelsea Enterprise during the dates and time material to the instant case;

4. Whether or not the Subject Cargo onboard M/T Chelsea Enterprise seized on January 18, 2011 is the same cargo that was loaded at Petron's Bataan Refinery 16 on January 2011;

5. Whether or not the Subject Cargo was undocumented at the time of the seizure by respondent BOC's RATS Group;

6. Whether or not all the taxes, duties and fees due on the Subject Cargo were paid by Petron Corporation;

7. Whether or not Petron applied for a tax drawback from the BIR in relation to the Subject Cargo;

8. Whether or not there is subsisting demise or bareboat charter between petitioners MFPI and CSC over M/T Chelsea Enterprise at the time of the seizure.

B. Petitioner CSC submitted the following issues:

Legal Issues

1. Whether the respondent BOC has jurisdiction to effect the seizure and impending forfeiture of the M/T Chelsea Enterprise and Seized Cargo;

2. Whether or not the Charter Agreement between petitioners MFPI and CSC is a bareboat or demise charter;

3. Whether Section 2530 (a) and (k), in relation to Section 3602 of the TCCP applies to petitioner CSC considering that it is a common carrier owning the subject vessel under a subsisting demise or bareboat Charter Agreement;

4. Whether respondent Finance Secretary gravely erred in ordering the forfeiture of the M/T Chelsea Enterprise in favor of the government under Section 2530 of the TCCP.

Factual Issues

1. Whether petitioner MFPI has absolute control over the M/T Chelsea Enterprise and its crew;

2. Whether petitioner CSC, as owner of the M/T Chelsea Enterprise, or any of its agents, had actual knowledge of or participation in the alleged unlawful acts; and

3. Whether the Seized Cargo was locally purchased by petitioner MFPI from Petron Corporation.

C. Respondents submitted the following issues:

1. Whether the Vessel M/T Chelsea and all its cargo were validly apprehended and seized at the time said vessel was transporting the subject oil cargo to M/T China Venture;

2. Whether respondent Secretary of Finance properly found the vessel M/T Chelsea Enterprise and its oil cargo liable for seizure and forfeiture under the Tariff and Customs Code of the Philippines *(sic)*;

3. Whether the vessel M/T Chelsea Enterprise is subject to forfeiture notwithstanding ownership thereof by Chelsea Shipping Corporation."

The *Warrant of Seizure and Detention* issued on January 20, 2011 ordered the seizure of M/T Chelsea Enterprise and M/T China Venture and the subject cargo for alleged violation of Section 2530 (a), (b), (f), (k), (l), paragraphs 3, 4 and 5, in relation to Section 3602 of the TCCP. While the District Collector and respondent COC later on released the subject cargo and M/V Chelsea Enterprise, the same were subsequently ordered forfeited on automatic appeal before respondent Secretary of Finance.

According to respondents, the burden of proof in seizure and forfeiture cases rests upon the claimant. Respondent maintained that before such rule of evidence would apply, probable cause for violation of the TCCP must be shown prior to the institution of such proceedings. Respondent correctly cited the ruling of the Supreme Court in the case of *Acting Commissioner of Customs vs. Court of Tax Appeals, et al.,*[53] where it was held that the probable cause is shown in the failure by a person to produce, upon apprehension, the required documents authorizing the entry of specific goods into the country.

Respondents alleged that the concept of probable cause in this case materialized when Chief Mate Pagalilauan of M/T Chelsea Enterprise failed to produce any document, particularly evidencing the payment of duties and taxes, regarding the oil cargo being transferred to M/T China while respondent BOC's RATS Group seized the vessels at the time the crew was pumping oil to M/T China Venture.[54]

Respondents claimed that there was no nomination/purchase order, delivery receipt, invoice or certification showing at least the source and/or identity of the oil cargo presented by the crew of M/T Chelsea Enterprise.

In addition, respondents averred that if the subject oil cargo were sourced locally as claimed by petitioner MFPI, then the crew of M/T Chelsea Enterprise could have easily shown to the respondent BOC's RATS Group, as early as during the seizure operation, any duly issued documents or invoices showing the actual source of the petroleum products, including the details of their disposition or shipment.

On this matter, the testimony of petitioner's witness, Elvis L. Pagalilauan, Chief Mate of M/T Chelsea Enterprise from 2010 to 2011[55], affirmed that he only produced the bunkering permit and reasoned that respondent BOC's RATS Group only requested for the bunkering permit at the time of apprehension and did not ask for any other document. Chief Mate Pagalilauan further testified that he had with him Delivery Notes, Surveyor's Report, Notice of Release and Withdrawal Certificates,

---

[53] G.R. No. L-62636, April 27, 1984.
[54] Exhibit "PPPP".
[55] Exhibit "PPPP".

among others at the time of the apprehension of the vessel and the subject cargo.[56]

It must be emphasized that before forfeiture proceedings are instituted the law requires the presence of probable cause. Once established, the burden of proof is shifted to the claimant. Under Section 2536 of the TCCP, the COC, Collector of Customs or any other customs officer, with prior authorization in writing by the COC, may demand evidence of payment of duties and taxes on foreign articles openly offered for sale or kept in storage; and if no such evidence can be produced, such articles may be seized and subjected to forfeiture proceedings; provided, however, that during such proceedings the person or entity from whom such articles were seized shall be given an opportunity to prove or show the source of such articles and the payment of duties and taxes thereon.[57]

In this case, while petitioner MFPI, through the testimony of its witness, explained why only the bunkering permit was presented to respondent BOC's RATS Group, the documents which Chief Mate Pagalilauan had in his possession at the time of the apprehension appears to pertain to the delivery of IDO to vessels other than M/T China Ventures. The BOC-RATS Group cannot be faulted for apprehending the subject vessel and cargo since at that time, aside from the fact that they are acting upon "derogatory information", the bunkering permit and the documents in Chief Mate Pagalilauan's possession, on their face, do not pertain to the cargo seized.

There was, indeed, probable cause for violation of the TCCP at the time of the apprehension of the vessel and cargo.

Nevertheless, the Court shall determine whether there was violation of the TCCP in this case based on the evidence presented by petitioners MFPI and CSC before this Court.

The seizure of the subject cargo and vessel stemmed from the alleged violation of Section 2530 (a), (b), (f), (k), (l), paragraphs 3, 4 and 5 in relation to Section 3602 of the TCCP which provide:

> SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* – Any vehicle, vessel or aircraft, cargo,

---

[56] Exhibit "PPPP".
[57] *Carrara Marble Philippines, Inc., vs. Commissioner of Customs*, G.R. No. 129680, September 1, 1999.

article and other objects shall, under the following conditions be subjected to forfeiture:

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

b. Any vessel engaging in the coastwise which shall have **on board any article of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores**, without such article having been properly **entered or legally imported**;

xxx xxx xxx

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

xxx xxx xxx

k. Any conveyance actually being used for the transport of **articles subject to forfeiture under the tariff and customs laws**, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The **mere conveyance of contraband or smuggled articles** by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;

1. Any **article sought to be imported** or exported.

xxx xxx xxx

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and

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

xxx xxx xxx

SEC. 3602. *Various Fraudulent Practices Against Customs Revenue.* – Any person who makes or attempts to **make any entry of imported** or exported **article** by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or **knowingly effects any entry** of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or **knowingly and willfully files any false or fraudulent entry** or claim for the payment of drawback or refund of duties upon the **exportation of merchandise**, or makes or files any affidavit abstract, record, certificate or other document,

> with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the **exportation of merchandise**, greater than that legally due thereon, or who shall be guilty of any willful act or omission shall, for each offense, be punished in accordance with the penalties prescribed in the preceding section.

The penalty of forfeiture is imposed on any vessel engaged in smuggling, provided that the following conditions are present:

> (1) The vessel is "**used unlawfully in the importation** or exportation **of articles into or from**" the Philippines;
>
> (2) The articles are **imported to** or exported from "any Philippine port or place, except a port of entry"; or
>
> (3) If the vessel has a capacity of less than 30 tons and is "**used in the importation of articles** into any Philippine port or place other than a port of the Sulu Sea, where importation in such vessel may be authorized by the Commissioner, with the approval of the department head."[58]

It is clear from the foregoing that the provisions allegedly violated by petitioners MFPI and CSC as alleged in the *Warrant of Seizure and Detention* and the assailed Decision of respondent Secretary of Finance relate to **importation**.

Importation consists of bringing an article into the country from the outside. Importation is complete when the taxable, dutiable commodity is brought within the limits of the port of entry.[59]

Petitioners MFPI and CSC claimed that the subject cargo was not imported.

According to petitioner MFPI, it is not engaged in the importation of petroleum and that M/T Chelsea Enterprise never left the Philippine territory during the times material to the case.

---

[58] *El Greco Ship Manning and Management Corporation vs. Commissioner of Customs,* G.R. No. 177188, December 4, 2008.
[59] *Jardeleza vs. People of the Philippines,* G.R. No. 165265, February 6, 2006.

In order to prove that the cargo seized was not imported and was actually sourced from Petron's Bataan Refinery (PBR), petitioner MFPI narrated the events that transpired before the seizure of the subject cargo was made.

Petitioner MFPI alleged that it purchased the IDO from PBR, loaded them on board M/T Chelsea, a ship which MFPI chartered for delivery to four (4) vessels, namely: M/V Nashwan, M/V Amber Halo, M/V Eastern Sky and M/V Golden Venus.

According to petitioner MFPI, **M/T Chelsea Enterprise was originally scheduled to deliver the subject cargo to the 4 vessels beginning with M/V Nashwan in the Port of Manila on January 15, 2011**. Unfortunately, **M/V Nashwan allegedly arrived in the Port of Manila only on January 16, 2011, a day late for the scheduled delivery.** M/V Nashwan then had to immediately depart from the Port of Manila on the same day. Hence, petitioner MFPI was not able to deliver the IDO to M/V Nashwan that had been previously loaded on M/T Chelsea Enterprise in PBR.

As a consequence of the delay, petitioner MFPI was allegedly constrained to move the delivery of M/V Amber Halo to January 18, 2011, the same date of delivery to M/V Eastern Sky, to save on barging costs.

Petitioner MFPI maintained that at that time, it was holding another purchase order of approximately 187 MT of IDO from Bergen Bunkers - Norway, a foreign fuel trader, for delivery to M/T China Venture on January 17 or 18, 2011 in the Port of Bataan.

Initially, the IDO was supposed to be delivered by truck at the Port of Bataan. However, due to circumstances beyond the control of petitioner MFPI, the mode and place of delivery to M/T China Venture was allegedly moved from the Port of Bataan to the Port of Manila. Thus, the delivery of IDO from M/T China Venture would have to be made using M/T Chelsea Enterprise at the Port of Manila on January 17, 2011. However, M/T Chelsea Enterprise at the time was already loaded with 220 MT of IDO for delivery to the four (4) international vessels.

According to petitioner MFPI, the circumstances gave rise to logistical problems for petitioner MFPI. At that time, M/T Chelsea Enterprise could no longer accommodate the additional 187 MT of IDO for M/T China Venture since it was still loaded with 220 MT of IDO intended for delivery to M/V Nashwan, M/V Amber Halo, M/V Eastern Sky and M/V Golden Venus. Furthermore, it has been the policy of Petron Corporation not to load fuel to vessels still containing residual fuel in their compartments. Offloading the fuel loaded on M/T Chelsea Enterprise then loading the 187 MT of IDO at the PBR for delivery to M/T China Venture in the Port of Manila will obviously cause delays resulting in petitioner MFPI missing all its scheduled deliveries.

Given the urgent delivery requirements of M/T China Venture, and in order to allow said vessel to sail to Palawan on time, petitioner MFPI was allegedly constrained by operational necessities to deliver to M/T China Venture part of the IDO intended for the four (4) vessels considering that the volume of IDO to be delivered to M/T China Venture could be accommodated by the 220 MT of IDO already on board M/T Chelsea Enterprise. Thereafter, petitioner MFPI intended for the same volume to be replenished or replaced with the 187 MT of IDO ordered to M/T China Venture which would be loaded again on M/T Chelsea Enterprise at PBR for subsequent delivery to M/V Amber Halo and M/V Eastern Sky in Batangas and M/V Golden Venus in Pasar, Leyte.

However, during the delivery of the IDO from M/T Chelsea to M/T China Venture on January 17, 2011, M/T Chelsea Enterprise, the vessels were apprehended and a *Warrant of Seizure and Detention* was later issued on January 20, 2011 against M/T Chelsea Enterprise, M/T China Venture and the subject cargo.

Petitioner MFPI, likewise, alleged that the Petron Corporation had already paid all the taxes for the imported crude oil used to produce the subject cargo.

Also, petitioner MFPI argued that it subjected the IDO found in M/T Chelsea Enterprise and those found in Petron Corporation to laboratory test to prove that the IDO seized is sourced from Petron Corporation. The laboratory test results allegedly confirmed that the technical specifications of the cargo matched the technical specifications as certified by Petron Corporation for the IDO it sold to petitioner MFPI.

In addition, petitioner MFPI averred that the sale of the subject cargo to M/T China Venture is a domestic sale and thus is subject only to VAT, which petitioner MFPI allegedly paid.

On the other hand, petitioner CSC adopted the foregoing arguments of petitioner MFPI and added that petitioner CSC had absolutely no participation in the decision made by petitioner MFPI to address the alleged logistical problems it was facing at the time.

Petitioner CSC argued that petitioner MFPI had absolute control over M/T Chelsea Enterprise and its crew pursuant to the terms of the Charter Agreement that was subsisting at the time of the seizure. Thus, petitioner CSC alleged that it cannot be held liable under the TCCP for any act of petitioner MFPI involving said vessel.

Petitioner CSC further alleged that in any event, as owner of the M/T Chelsea Enterprise, or any of its agents, it had no actual knowledge of or participation in the alleged unlawful acts.

Lastly, petitioner CSC contended that M/T Chelsea Enterprise was not involved in any unlawful activity since its cargo was locally obtained and proof of payment of all taxes and duties had been duly presented.

For their part, respondents contended that the questionable oil cargo loaded on M/T Chelsea Enterprise that was being transferred to M/T China Venture does not have a corresponding invoice or delivery receipt from the corresponding supplier.

Respondents, likewise, noted the following inconsistencies in the evidence presented by the petitioners:

1. The bunkering permit refers to 169.685 MT of MGO while the nomination order no. 109551-01-1 refers to the order of 220,000 cubic meters of gasoil.

2. The nomination order indicates January 12, 2011 as the estimated date of arrival and January 13, 2011 as the estimated date of shipment, and not January 17, 2011.

3. The invoice by MFPI to Bergen Bunkers issued only on January 18, 2011 does not tally with the bunkering permit.

4. No proof of actual purchase of any IDO from Petron Corporation or any other local source intended for delivery to M/T China Venture.

While the Court shares the above-mentioned observations made by respondents, perusal of the rest of the evidence presented by the petitioners, however, showed that there was no importation of the subject cargo from M/T Chelsea Enterprise to M/T China Ventures.

In order to address the factual issues present in this case, the Court made a thorough examination of the evidence and found what actually transpired before the seizure of the subject vessel which shed light as to the kind of fuel oil seized and the source of the said oil cargo.

Records show that petitioner MFPI is engaged in brokering and trading, brokering and dealing in all kinds of petroleum products on wholesale/retail basis to local and foreign vessels and/or companies.[60]

In pursuance of its business, petitioner MFPI chartered M/T Chelsea Enterprise, a tanker vessel, from petitioner CSC.[61]

On various dates, petitioner MFPI received orders of a total of 407 MT of IDO from various fuel traders for the delivery to five (5) vessels arriving in various places in the Philippines on various dates, the details of the said orders are as follows:

DATE	FUEL TRADERS	VESSELS	QUANTITY	EXHIBIT
1/3/11	Sea Trader International LTD	M/V Amber Halo	80 MT	K
1/7/11	Cockett Marine	M/V Nashwan	90 MT	L
1/7/11	Sumisho	M/V Golden Venus	35 MT	M
1/10/11	Bergen Bunkers	M/V China Ventures	220,000 CUM/ 187 MT	BB
1/14/11	Eastern Shipping	M/V Eastern Sky	15 MT	N

One of the fuel traders mentioned above is Bergen Bunkers. Ms. Ingrid Aban, the Administrative Manager of United Salvage and Towage Phils., Inc. which is the one who manages and operates vessels owned by Pinamungahan Towage, the owner of M/T China Ventures, testified that Bergen Bunkers - Norway is an international fuel trader based in Norway engaged by CGG Veritas Services SA of France, the charterer of

[60] Exhibit "B".
[61] Exhibits "H" and "I".

the vessel M/T China Venture, to source the fuel requirements of said vessel through bidding among local fuel traders in the Philippines.[62]

Ms. Aban further testified that CGG Veritas Services SA of France, through its branch, CGG Veritas Services (Singapore) Pte. Ltd., was contracted by Forum Ltd. to conduct Marine 2D/3D Seismic Data Acquisition Survey in Offshore West Palawan for two (2) to three (3) months, commencing on or about January 17, 2011, sea and weather permitting, as part of the petroleum exploration of Forum Ltd. Thus, CGG Veritas Services SA of France, through its branch, chartered the vessel M/T China Venture for the purpose.[63]

For the above purpose, Ms. Aban testified that petitioner MFPI was awarded the supply contract by Bergen Bunkers - Norway for approximately 187 MT of IDO to be delivered to M/T China Venture as shown in the Nomination/Purchase Order previously described. A copy of the said Nomination/Purchase Order was emailed to Ms. Aban by the Supply Chain Coordinator for the Asia-Pacific Division of CGG Veritas Services SA of France, the charterer of M/T China Venture.[64]

It must be noted that, in the order sent by Bergen Bunkers, the expected time of arrival of M/T China Ventures was on January 12, 2011 and the IDO ordered were initially to be delivered by truck at the Herma Shipyard Bataan.[65]

However, on January 13, 2011, Ms. Aban informed Wenda Cabugo of petitioner MFPI through email that M/T China Venture was still expected to arrive at the **Port of Manila on January 17, 2011** and that it can immediately load the fuel upon M/T China Venture's arrival, though such information was still subject to confirmation.[66] Thus, the delivery of the 187 MT of IDO originally set for January 12, 2011 by truck at Herma Shipyard in Bataan was moved to January 17, 2011.[67]

On January 14, 2011, at 8:48 a.m., Wenda Cabugao of petitioner MFPI replied to Ms. Aban's email, noting the latest estimated time of arrival of M/T China Venture and informing the latter that she will still confirm later that day if the delivery will be made via truck or barge.[68]

---

[62] Exhibit "MMMM".
[63] Exhibit "MMMM".
[64] Exhibits "MMMM" and "KKKK-1".
[65] Exhibit "BB".
[66] Exhibit "LLLL" and "LLLL-1".
[67] Exhibit "MMMM".
[68] Exhibit "LLLL-2".

That explains why the delivery of IDO for M/T China Ventures was moved from January 12, 2011 at the Herma Shipyard in Bataan to January 17, 2011 at the Port of Manila.

On the same day, Petron Corporation's Account Executive, Mr. Loreto E. Reyes, Jr.[69], received four (4) nominations/purchase orders from petitioner MFPI requesting for a total of 220 MT of IDO for M/V Nashwan[70], M/V Amber Halo[71], M/V Eastern Sky[72] and M/V Golden Venus[73]. The 4 nominations/purchase orders further indicated that the delivery mode would be through petitioner MFPI's barge, M/T Chelsea Enterprise and the orders will be loaded to the barge on January 16, 2011.

Petitioner MFPI also ordered from Petron Corporation 220 Kiloliters, or approximately 187 MT of IDO for M/T China Venture under Nomination No. 11D-011958 dated January 14, 2011. It was indicated in the nomination that the IDO would be picked up at PBR through petitioner MFPI's barge M/T Chelsea Enterprise.[74]

However, according to Mr. Reyes, their sales office received subsequent instructions on the same day from petitioner MFPI to defer the delivery intended for M/T China Venture. Mr. Reyes said that petitioner MFPI requested that the delivery of IDO intended for M/T China Venture be deferred to January 17, 2011.[75]

As to the rest of the nominations, the same were processed by Mr. Reyes and, thereafter, Mr. Reyes advised petitioner MFPI that its orders for its clients have been released and the loading of the IDO aboard M/T Chelsea Enterprise can proceed as scheduled.[76]

Thereafter, Mr. Reyes was informed by petitioner MFPI that M/T Chelsea Enterprise will arrive at PBR on Sunday, January 16, 2011, as scheduled.[77]

[69] Exhibit "OOOO".
[70] Exhibit "P".
[71] Exhibit "Q".
[72] Exhibit "R".
[73] Exhibit "O".
[74] Exhibit "FFFF".
[75] Exhibit "OOOO".
[76] Exhibit "OOOO".
[77] Exhibit "OOOO".

Meanwhile, M/T Chelsea Enterprise was at the Port of Manila from 9:25 p.m. of January 14, 2011 up to its departure for PBR on January 15, 2011, at 9:15 p.m.[78]

At the Port of Manila, M/T Chelsea Enterprise underwent tank cleaning the entire morning of January 15, 2011 in preparation for the loading of the subject cargo at the PBR. According to Chief Mate Pagalilauan of M/T Chelsea Enterprise, most of the tanks of M/T Chelsea Enterprise were previously loaded with Industrial Fuel Oil (IFO) while the cargo to be loaded at the PBR is IDO. Considering that Petron Corporation does not allow the loading of fuel to tanks which contain residual fuel, hence, the tank cleaning.[79]

M/T Chelsea Enterprise has eight (8) cargo tanks. Four (4) of the eight (8) tanks were cleaned on January 15, 2011 since the other four (4) tanks still contained cargo at the time of the tank cleaning. The four (4) tanks, specifically Tank 1- Portside (1P), Tank 1-Starboard Side (1S), Tank 3-Portside (3P) and Tank 3 – Starboard Side (3S), were cleaned and emptied and have a maximum capacity of 278.91 MT as can be verified from the Stowage Plan dated January 16, 2011.[80]

After tank cleaning, Chief Mate Pagalilauan called Mr. Romeo L. Gomez of petitioner MFPI and informed him that M/T Chelsea Enterprise can already load a maximum of 278.91 MT of IDO.[81]

Mr. Gomez, on the other hand, instructed Chief Mate Pagalilauan that M/T Chelsea Enterprise can already proceed to PBR to receive IDO to be loaded into the four (4) empty tanks covering a total of 220 MT of IDO intended for delivery to the four (4) international vessels, namely M/V Nashwan, M/V Amber Halo, M/V Eastern Sky and M/V Golden Venus.[82] M/V Chelsea Enterprise left the Port of Manila on January 15, 2011 at around 9:15 p.m.[83]

M/T Chelsea Enterprise arrived at the Port of Lamao, Bataan on January 15, 2011 at around 11:50 p.m.[84] a

---

[78] Exhibits "PPPP", "LLL" and "AAAA".
[79] Exhibit "PPPP".
[80] Exhibit "JJJJ".
[81] Exhibit "PPPP".
[82] Exhibit "PPPP".
[83] Exhibit "LLL" and "AAAA".
[84] Exhibit "LLL" and "AAAA".

At approximately 2:00 a.m. of January 16, 2011, Chief Mate Pagalilauan called, through radio, the PBR in order to tender M/T Chelsea Enterprise's Notice of Readiness for the loading of the IDO onboard M/T Chelsea Enterprise while at anchorage near the Port of Lamao, Bataan.[85]

PBR or Petron Bataan Refinery accepted the Notice of Readiness at 4:40 a.m. of January 16, 2011.[86]

Thereafter, a surveyor from the PBR went onboard M/T Chelsea Enterprise to inspect the four (4) empty tanks before the loading of the IDO can be commenced. The surveyor, Intertek, issued the Surveyor Report dated January 16, 2011[87] showing the contents of all the tanks of M/T Chelsea Enterprise at the time of the inspection and before the loading of the subject cargo.[88]

After PBR gave its signal to M/T Chelsea Enterprise to proceed near the Port for the actual loading of the subject cargo at around 6:00 a.m. of January 16, 2011, M/T Chelsea Enterprise went into the Port of Lamao, Bataan for the loading of the subject cargo.[89]

Subsequently, the 220 MT of IDO was loaded to M/T Chelsea Enterprise.[90]

After the loading was complete, PBR then gave a copy of the Delivery Notes corresponding to the orders made by petitioner MFPI to the crew of M/T Chelsea Enterprise to evidence the actual loading of IDO. [91]

Furthermore, the Invoices[92] corresponding to the Delivery Notes[93] were automatically generated by the system, and thereafter forwarded to petitioner MFPI.[94]

---

[85] Exhibit "PPPP".
[86] Exhibit "PPPP".
[87] Exhibit "IIII".
[88] Exhibit "IIII".
[89] Exhibit "IIII".
[90] Exhibit "IIII".
[91] Exhibit "IIII".
[92] Exhibits "W", "X", "Y" and "Z".
[93] Exhibits "S", "T", "U" and "V".
[94] Exhibit "OOOO".

On the other hand, M/T Chelsea Enterprise also received various documents from PBR for clearance to leave the Port of Bataan such as the Cargo Outturn Certificate[95], Withdrawal Certificate[96], Notice of Release[97], and the Cargo Quality Certificates[98], all pertaining to the IDO loaded to M/T Chelsea Enterprise.

At around 10:30 a.m. of January 16, 2011, M/T Chelsea Enterprise was released from PBR and waited for further instructions from petitioner MFPI.[99]

However, at around 4:30 p.m. of January 16, 2011, Chief Mate Pagalilauan received instructions from petitioner MFPI to proceed to the Port of Manila to deliver first 187 MT out of the 220 MT of the subject cargo to M/T China Venture on January 17, 2011.[100]
M/T Chelsea Enterprise arrived at the Port of Manila on January 16, 2011 at 7:47 p.m.[101] and remained by the breakwater while waiting for M/T China Venture to arrive.

M/T China Venture arrived at around 2:14 p.m. of January 17, 2011[102] and at around 3:30 p.m. of the same date, M/T Chelsea Enterprise went alongside M/T China Venture to deliver the 187 MT of IDO.[103]

At around 7:00 p.m. of January 17, 2011, M/T Chelsea Enterprise started pumping oil to M/T China Venture. After pumping the oil into M/T China Venture, the BOC-RATS Group boarded M/T Chelsea Enterprise and told the crew members that the latter was being seized and that the vessel and its cargo were to be detained at the Port of Manila.[104]

While some of the arguments interposed by the petitioner MFPI were found to be inconsistent with the evidence presented before the Court, the totality of the evidence, which supported the above narration of events that transpired before the seizure, however, showed that the

---

[95] Exhibit "BBBB".
[96] Exhibit "CCCC".
[97] Exhibit "DDDD".
[98] Exhibits "HHHH" to "HHHH-3".
[99] Exhibit "PPPP".
[100] Exhibit "PPPP".
[101] Exhibit "AAAA".
[102] Exhibit "MMM-4".
[103] Exhibit "AAAA".
[104] Exhibit "PPPP".

IDO which was seized by the respondent BOC's RATS Group was the same IDO sourced from PBR.

One of the inconsistencies noted by the Court was on the testimony of petitioner MFPI's witness, Mr. Filomeno Santos, that M/V Nashwan could not sail right away and could not be able to receive the marine gas oil[105] which appears to be in conflict with the Certification issued by the Philippine Ports Authority that M/V Nashwan arrived at the Port of Manila on January 16, 2011 at 12:48 p.m. and departed on the same day only at 11:12 p.m. [106]

Consideration of the Certification only showed that M/T Chelsea Enterprise can still supply the IDO ordered for M/V Nashwan between 7:47 p.m., the time of arrival of M/T Chelsea Enterprise to the Port of Manila, until 11:12 p.m., the time of departure of M/V Nashwan from the same port.

Also, Chief Mate Pagalilauan testified that it took approximately three (3) hours for M/T Chelsea Enterprise to reach the Port of Lamao, Batangas from the Port of Manila.[107] Therefore, if M/V Chelsea Enterprise proceeded to the Port of Manila right after its release from the Port of Lamao, Batangas at around 10:30 a.m. of January 16, 2011, it could have reached the Port of Manila at around 1:30 p.m. of the same day and could have delivered the marine gas oil to M/V Nashwan which already arrived at the Port of Manila at 12:48 p.m. of January 16, 2011.

Furthermore, even if M/V Nashwan arrived on the alleged scheduled date of delivery, which, according to petitioner MFPI was on January 15, 2011, petitioner MFPI still could not have delivered the IDO for said vessel through M/T Chelsea Enterprise considering that M/T Chelsea Enterprise was still at the Port of Manila on the same day of the alleged scheduled date of delivery to have its tanks cleaned the whole morning and arrived at the Port of Lamao, Batangas only at around 11:50 p.m. on the same day to load the IDO intended for the 4 vessels, including M/V Nashwan.

Clearly, the evidence presented do not support petitioner MFPI's argument that M/T Chelsea Enterprise was originally scheduled to begin the delivery of the subject cargo with M/V Nashwan in the Port of Manila on January 15, 2011; that M/V Nashwan arrived late for the scheduled delivery at the Port of Manila which resulted in petitioner

---

[105] TSN taken on January 28, 2013, pp. 11-12.
[106] Exhibit "MMM-2".
[107] Exhibit "PPPP".

MFPI's failure to deliver the IDO to M/V Nashwan that had been previously loaded on M/T Chelsea in the PBR.

What can only be deduced from the foregoing is that at the time M/T Chelsea Enterprise was still at the Port of Manila for tank cleaning until its arrival to the Port of Lamao, Batangas on January 15, 2011 and during the loading of the IDO to M/T Chelsea Enterprise intended for M/V Nashwan, petitioner MFPI had no plans to deliver the said IDO to M/V Nashwan.

Nevertheless, the said conclusion supports petitioner MFPI's allegation that the IDO intended to be delivered to M/V Nashwan was part of the IDO delivered to M/T China Ventures which was subsequently seized by the respondent BOC's RATS Group on January 17, 2011.

Also, part of the Deck Log Book of M/T Chelsea Enterprise dated January 15 to 17, 2011 presented by petitioners confirmed the findings of this Court as to what transpired during the voyage of M/T Chelsea Enterprise from January 15 to 17, 2011. [108]

Aside from the evidence from which the facts found by this Court were based, petitioner MFPI also presented the stowage plans prepared by Chief Mate Pagalilauan. The stowage plan prepared before loading the cargo from the PBR on January 16, 2011 showed that the compartments of M/T Chelsea Enterprise, specifically Tank 1- Portside (1P), Tank 1-Starboard Side (1S), Tank 3-Portside (3P) and Tank 3 – Starboard Side (3S), were empty.[109] After loading the cargo from the PBR on the same day, the stowage plan reflected that IDO were already onboard the said 4 compartments.[110] On the other hand, the stowage plan for January 17, 2011 indicated that the volume of IDO to be discharged to M/T China Venture at the Port of Manila were to be taken from Tank 1- Portside (1P), Tank 1-Starboard Side (1S), Tank 3-Portside (3P) and Tank 3 – Starboard Side (3S), the vessel's compartment were the IDO sourced from PBR were previously loaded.[111] The stowage plan prepared by Chief Mate Pagalilauan corroborates the Tank Inspection Report which formed part of the Certificate of Quantity[112] presented by petitioner MFPI showing the specific compartments of M/T Chelsea Enterprise which were cleaned and emptied for loading of the IDO.

---

[108] Exhibits "AAA" to "AAA-3".
[109] Exhibit "JJJJ".
[110] Exhibit "JJJJ-1".
[111] Exhibit "JJJJ-2".
[112] Exhibit "IIII".

Furthermore, Petron Corporation issued a Certification dated August 26, 2011[113], certifying that the technical specifications of the IDO loaded to M/T Chelsea Enterprise on January 16, 2011 in her Voyage No. 143 and intended for international vessels M/V Eastern Sky, M/V Nashwan, M/V Amber Halo and M/V Golden Venus c/o Marine Fuels Philippines, Inc. under Petron Corporation Invoices[114] and Delivery Notes[115] are as described in the Cargo Quality Certificates attached thereto which were similar to the Cargo Quality Certificates issued by Petron Corporation to M/T Chelsea Enterprise after the IDO intended for the 4 vessels were loaded to M/T Chelsea Enterprise. As testified by Petron Corporation's Account Executive, Mr. Loreto Reyes, the said certification certified that the technical specifications of the IDO loaded on board M/T Chelsea Enterprise on January 16, 2011 came from Petron Corporation. <u>It also certified that Petron Corporation is the only local manufacturer of IDO with a maximum sulfuric content of 0.3%</u>.[116]

Also, petitioner MFPI requested to acquire samples of the IDO from M/T Chelsea Enterprise's cargo tank as per the Certification dated August 16, 2011 reflecting the signatures of Mr. Romeo L. Gomez, Jr. of petitioner MFPI, C/M B.S Marinque of Chelsea Enterprise, Inspector Derbin Tan of PID MICT and Special Agent Anthony Alemania of RATS-AOCG.[117] The samples were acquired for laboratory testing to be conducted by SGS and Intertek which, according to petitioner's witness Mr. Filomeno Santos, Jr., are world-renowned companies engaged in providing broad range of services, including but not limited to laboratory testing and inspections to various industries, such as the Oil and Gas Industry.

The laboratory results with the signatures of Cristino Q. Navarro, Laboratory Manager of SGS and Sandra E. Bucao, Country Manager of Intertek, attached to the certification reflected that the samples taken from M/T Chelsea Enterprise's cargo tank have approximately similar sulfuric content with the IDO loaded on board M/T Chelsea Enterprise on January 16, 2011 which has a maximum sulfuric content of 0.3%.[118] Mr. Reyes further testified that the characteristics of the IDO may slightly vary through time depending on the handling and storage conditions of the product after delivery. Mr. Reyes added that only

---

[113] Exhibit "OOO".
[114] Exhibits "W", "X", "Y", and "Z".
[115] Exhibits "S", "T", "U", and "V".
[116] Exhibit "OOOO".
[117] Exhibit "QQQ".
[118] Exhibit "QQQ" with attachments; Supplemental Judicial Affidavit of Mr. Filomeno Santos executed on May 6, 2013.

Petron Corporation has the capacity to manufacture IDO in the country and no one directly imports IDO in the Philippines at that time.[119]

From the foregoing pieces of evidence presented by petitioner MFPI, it can be concluded that **the IDO seized from M/T Chelsea Enterprise is the same IDO which was loaded to M/T Chelsea Enterprise on January 16, 2011 from PBR**. Indeed, the delivery by M/T Chelsea Enterprise of the subject cargo to M/T China Ventures, a domestic vessel[120], is a domestic sale and as such cannot be considered as importation of petroleum products.

On the other hand, Undersecretary Carag mentioned in the assailed Decision that even granting *arguendo* that the subject marine gas oil came from Petron Corporation, the sales invoice issued by Petron Corporation covering its IDO to be delivered to M/V Amber Halo, M/V Nashwan, M/V Eastern Sky and M/V Golden Venus, indicate "NO EXCISE TAX BILLED". According to the Undersecretary Carag, no excise tax was billed because the intended recipients were all foreign vessels.

Consequently, the undersecretary concluded that the non-payment of excise tax on the imported article can be considered substantial evidence to support the conclusion that the said fuel product was imported or withdrawn with the intention to evade the payment of duties and taxes due thereon.

In this regard, it must be emphasized that the seizure made by the respondent BOC's RATS Group was not actually made on the imported crude oil from which the IDO was manufactured but on the IDO themselves with the assumption that the said IDO was bunker oil. Considering that the Court already found that the subject cargo is not bunker oil but IDO which are not imported, proof that the payment of duties and taxes for the importation of crude oil used to manufacture the IDO seized is unnecessary.

Nevertheless, petitioner MFPI also presented evidence which established that the duties and taxes were paid on the crude used on the IDO initially intended to be delivered to M/V Eastern Sky, M/V Nashwan, M/V Amber Halo and M/V Golden Venus but was subsequently delivered to M/V China Ventures. Petitioner MFPI presented the Certification issued by the Tax Manager of Petron

---

[119] Exhibit "OOOO".
[120] As admitted by respondents in their Memorandum filed on September 19, 2013, CTA Case Nos. 8330 & 8332 Docket, Vol. VII, p. 3435.

Corporation, Ms. Ma. Clarissa C. Arguelles, dated August 31, 2011 showing that the IDO intended to be sold to the previously mentioned 4 vessels were sourced from crude oil importation for the months of November and December 2010. It further certified that taxes are paid for the said importation; that importation of crude oil and petroleum is subject to duties at P0.00 pursuant to Executive Order No. 890; and that an annotation "no excise tax billed" appeared on the invoices pertaining to the subject IDO because sale of diesel fuel oil is subject to excise taxes at the rate of P0.00 per liter pursuant to Section 148 (i) of the National Internal Revenue Code (NIRC), as amended.

The Certifications issued by Petron were likewise accompanied by Petron's Import Entry and Internal Revenue Declration (IEIRD)[121], Customs Payment Receipts[122], Landbank Official Receipts[123], Authority to Release Imported Goods[124], and BOC Certifications[125] showing that the VAT on importation of crude oil on the dates specified in the Certification dated August 31, 2011 from which the subject IDO was sourced was paid.

It must also be noted that the Authority to Release Imported Goods submitted by petitioner MFPI, which states, among others, that the payment of the amount of tax liability shall effect the release of the imported articles, bear stamps showing that the imported crude oil were subsequently released. With the Customs Payment Receipts issued by the BOC and the subsequent release of the subject imported articles, it is clear that the taxes and duties for the subject importation of crude oil were already paid.

In view of respondents' failure to refute the rates used in the payment of duties and taxes on the importation of the subject crude oil which was duly established by the above-mentioned documentary evidence presented by petitioner MFPI, the Court finds that there was no illegal importation of the crude oil used in the manufacture of the IDO as certified by Petron Corporation.

From all the foregoing, it is concluded that there was no importation in the transfer of oil cargo which was found to be IDO from M/T Chelsea Enterprise to M/T China Ventures.

---

[121] Exhibits "HH-2-a", "HH-3-a", "HH-4-a", "HH-5-a", and "HH-6".
[122] Exhibits "HH-2-d", "HH-3-d", "HH-4-d", "HH-3-d", "HH-4-f", "HH-5-d", and "HH-6-d".
[123] Exhibits "HH-2-c", "HH-3-c", "HH-4-c", "HH-5-c", and "HH-6-c".
[124] Exhibits "HH-2-b", "HH-3-b", "HH-4-b", "HH-5-b", and "HH-6-b".
[125] Exhibits ""HH-2", "HH-3", "HH-4", "HH-5", and "HH-6".

Consequently, M/T Chelsea Enterprise cannot likewise be held liable for conveyance of articles subject to forfeiture under the TCCP or for conveyance of smuggled articles since the subject cargo contained in the said vessel was not smuggled.

Finding that the subject cargo and M/T Chelsea Enterprise are not subject to forfeiture under the TCCP, the resolution of the remaining issues is already moot.

WHEREFORE, premises considered, the instant Petitions are hereby **GRANTED**. Accordingly, the Decision of respondent Secretary of Finance ordering the forfeiture of the subject cargo and M/T Chelsea Enterprise is hereby **REVERSED** and **SET ASIDE.** The subject cargo and M/T Chelsea Enterprise are hereby ordered **RELEASED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice