REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

HERMA SHIPPING AND TRANSPORT CORPORATION,
Petitioner,

-*versus*-

HON. NICANOR FAELDON, IN HIS CAPACITY AS COMMISSIONER OF THE BUREAU OF CUSTOMS,
Respondent.

CTA CASE NO. 9561

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 17 2020 4:04 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review filed on 31 March 2017 by petitioner Herma Shipping and Transport Corporation against respondent Hon. Nicanor Faeldon, in his capacity as Commissioner of the Bureau of Customs, pursuant to ***Section 1136 of Republic Act No. 10863,*** otherwise known as the ***Customs Modernization and Tariff Act ("CMTA"),***[1] in relation to ***Rule 4, Section 3 (a) (4) of the Revised Rules of the Court of Tax Appeals ("RRCTA"),***[2] praying that the Decision of the District Collector of Bataan, which was deemed affirmed by respondent, be reversed and set aside, and that the order of forfeiture of M/Tkr. Malolos which has an estimated value of Fifty Eight

[1] Sec. 1136. *Review by the CTA.* – Unless otherwise provided in this Act or by any other law, the party aggrieved by the ruling or decisions of the Commissioner may appeal to the CTA, in the manner and within the period prescribed by law and regulations. Decisions of the Secretary of Finance when required by this Act, may likewise be appealed to the CTA.
Unless an appeal is made to the CTA in the manner and within the period prescribed by law and regulations, the ruling or decision of the Commissioner or the Secretary of Finance shall be final and executory.

[2] RULE 4
JURISDICTION OF THE COURT
SEC. 3. Cases within the jurisdiction of the Court in Divisions.- The Court in Divisions shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
xxx xxx xxx
(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

Million Nine Hundred Thirty Two Thousand Pesos (Php 58,932,000.00) be cancelled or lifted.

The Parties

Petitioner, Herma Shipping and Transport Corporation, is a domestic corporation engaged in the business of hauling, shipping and/or transporting oil and petroleum products of its customers in Philippine waters.

Respondent, Hon. Nicanor Faeldon, in his capacity as Commissioner of the Bureau of Customs, has exclusive jurisdiction over forfeiture cases under the ***CMTA***.

The Facts

Petitioner has been granted a Certificate of Public Convenience to operate M/Tkr. Malolos in its business of hauling petroleum products to any point in the Philippines.[3] SL Harbor Bulk Terminal Corporation ("SL") and petitioner entered into a Consecutive Voyage Charter Agreement for the transportation of the former's fuel and petroleum products for the period 01 April 2016 to 31 March 2017,[4] which includes the route Limay, Bataan to Navotas, Manila.[5]

On 15 December 2016, M/Tkr. Malolos made its way to SL Gas Terminal in Limay, Bataan to load SL's fuel and petroleum products for transportation to SL's terminal in Navotas, Manila.[6] The actual loading of the cargo occurred between 18:40 to 20:30 of 15 December 2016 pursuant to SL's instructions[7] with the cargo emanating from SL's terminal in Limay, Bataan.[8]

After completing the voyage and discharge of SL's fuel and petroleum products at SL's terminal in Navotas, Manila, M/Tkr. Malolos made its way back to SL Gas Terminal in Limay, Bataan on 17 December 2016 following instructions from SL to load another set of SL's fuel and petroleum products to be transported and unloaded once more at Navotas, Manila.[9]

On 20 December 2016, while anchored near SL's terminal in Limay, Bataan, petitioner's crew assigned to man M/Tkr. Malolos was served with a

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[3] See Exhibit P-17, Records, Vol. 1, pp. 397-407.
[4] See Exhibit P-18, Records, Vol. 1, pp. 408-409.
[5] See Exhibit P-19, Records, Vol. 2, p. 685.
[6] See Judicial Affidavit of Capt. Javier P. Gocotano, Exhibit P-10, Records, Vol. 1, p. 358.
[7] *Id,* at pp. 358-359.
[8] See Cross Examination of Capt. Javier P. Gocotano, *TSN for 23 May 2017 hearing,* Records, Vol. 3, pp. 1118-1135.
[9] See Judicial Affidavit of Capt. Javier P. Gocotano, Exhibit P-10, Records, Vol. 1, p. 358, in relation to Cross Examination of Capt. Javier P. Gocotano, *TSN for 23 May 2017 Hearing,* Records, Vol. 3, pp. 1118-1135.

Warrant of Seizure and Detention ("WSD") dated 17 December 2016 by Bureau of Customs ("BOC") officers for smuggling of fuel which was allegedly perpetrated via loop loading with another ship, M/T Alpine Magnolia, effectively detaining M/Tkr. Malolos.[10]

On 21 December 2016, petitioner sent a letter to District Collector of Customs Julius B. Premediles ("DCC") to explain its non-participation and lack of knowledge in the alleged fuel smuggling incident.[11]

In addition, petitioner filed a Motion to Lift WSD[12] and a Position Paper[13] to the DCC on 28 December 2016. In response, BOC's prosecutor filed a Comment/Opposition[14] to the Motion to Lift WSD on 5 January 2017.

After petitioner filed its Formal Offer of Evidence[15] on the Motion to Lift WSD on 10 January 2017, the DCC immediately rendered a Decision dated 20 January 2017 denying the Motion to Lift WSD and forfeited M/Tkr. Malolos.[16]

Petitioner then filed on 7 February 2017 a Notice of Appeal with Memorandum of Appeal before the DCC, copy furnished respondent.[17] Following ***Section 1126 of the CMTA,*** respondent has thirty (30) days to decide appeals on forfeiture cases, and if he fails to act within such period, the appealed decision is deemed affirmed.[18]

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[10] See Judicial Affidavit of Capt. Javier P. Gocotano, Exhibit P-10, Records, Vol. 1, pp. 357-358, in relation to Cross Examination of Capt. Javier P. Gocotano, *TSN for 23 May 2017 Hearing,* Records, Vol. 3, pp. 1118-1135.
[11] See Memorandum of petitioner, Records, Vol. 15, p. 6774, in relation to Exhibit "2" of Exhibit "H" of the Petition for Review.
[12] See Exhibit "E" of the Petition for Review, Records, Vol. 1, pp. 80-136.
[13] See Exhibit "F" of the Petition for Review, Records, Vol. 1, pp. 137-193.
[14] See Exhibit "G" of the Petition for Review, Records, Vol. 1, pp. 194-207.
[15] See Exhibit "H" of the Petition for Review, Records, Vol. 1, pp. 208-266.
[16] See Memorandum of petitioner, Records, Vol. 15, pp. 6774-6775, in relation to Exhibit "B" of the Petition for Review.
[17] See Exhibit "I" of the Petition for Review, Records, Vol. 1, pp. 267-291.
[18] Sec. 1126. *Appeal to the Commissioner.* – In forfeiture cases, the person aggrieved by the decision of a District Collector may, within fifteen (15) days or five (5) days in case of perishable goods, from receipt of the decision, file a written notice of appeal, together with the required appeal fee to the District Collector, furnishing a copy to the Commissioner. The District Collector shall immediately transmit all the records of the proceedings to the Commissioner, who shall review and decide on the appeal within thirty (30) days from receipt of the records, or fifteen (15) days in the case of perishable goods: *Provided,* That if within thirty (30) days, no decision is rendered, the decision of the District Collector under appeal shall be deemed affirmed. An appeal filed beyond the period herein prescribed shall be dismissed. Appeals to protest cases shall be governed by Section 114 of this Act. The decision of the Commissioner may be served through the recognized modes of service under existing law.

As respondent failed to act on the appeal by petitioner of the DCC's Decision within the prescribed period,[19] petitioner timely filed the instant Petition for Review on 31 March 2017.[20]

On 21 April 2017, Summons was issued to respondent.[21]

On 3 May 2017, petitioner filed an Urgent Motion for the Release of M/Tkr. Malolos from Seizure and Detention ("Motion to Release"). Petitioner alleged that M/Tkr. Malolos must be released because: a) it is a common carrier not subject to seizure, detention and forfeiture; b) it neither participated nor had knowledge in the alleged fuel smuggling activity; c) it has suffered and continues to suffer tremendous damage and prejudice due to the unlawful seizure, detention and forfeiture of M/Tkr. Malolos; and d) it is willing to post the requisite bond as required by the Court.[22] Respondent filed a Comment *(Re: Urgent Motion for the Release of MT Malolos from Seizure and Detention dated May 2, 2017)*[23] following this Court's Resolution ordering the same.[24]

In support of the Motion to Release, petitioner submitted the Judicial Affidavits of its witnesses, Ms. Clara F. Sapalo,[25] Capt. Javier P. Gocotano,[26] and Ms. Irish P. Santos,[27] along with the documents identified therein.

On 10 May 2017, respondent filed a Motion to Consolidate with this Court's First Division seeking the consolidation of the instant Petition for Review with the CTA Case Nos. 9551 and 9554.[28] In response, petitioner filed a Motion *(re: Consolidation of Cases)* praying that this Court disallow respondent's Motion to Consolidate as the cases sought to be consolidated involved different sets of facts and issues,[29] which was granted by this Court.[30]

On 10 May 2017, respondent filed a Motion for Extension of Time to File Answer,[31] which was granted by this Court.[32]

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[19] As the DCC's decision was appealed before respondent on 7 February 2017, respondent had until 9 March 2017 to act thereon. Due to respondent's inaction, the DCC's decision was deemed affirmed. Following ***Section 11 of Republic Act No. 1125,*** "any party adversely affected by a decision, ruling or inaction of the... Commissioner of Customs... may make an appeal with the CTA within thirty (30) days after the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon." Consequently, petitioner had until 8 April 2017 (*i.e.*, the thirtieth (30th) day from 9 March 2017 within which to file the instant Petition for Review.
[20] See Petition for Review, Records, Vol. 1, pp. 10-291.
[21] See Summons, Records, Vol. 1, p. 292.
[22] See Motion to Release, Records, Vol. 1, pp. 293-309.
[23] Records, Vol. 2, pp. 530-538.
[24] See Resolution dated 12 May 2017, Records, Vol. 1, pp. 310-312
[25] See Judicial Affidavit of Ms. Clara F. Sapalo, Exhibit P-11, Records, Vol. 1, pp. 314-353.
[26] See Judicial Affidavit of Capt. Javier P. Gocotano, Exhibit P-10, Records, Vol. 1, pp. 354-377.
[27] See Judicial Affidavit of Ms. Irish P. Santos, Exhibit P-16, Records, Vol. 1, pp. 378-420.
[28] See Annex "A" of Motion (re: Consolidation of Cases), Records, Vol. 2, pp. 524-529.
[29] Records, Vol. 2, pp. 517-529.
[30] See Resolution dated 20 June 2017, Records, Vol. 2, pp. 723-726.
[31] Records, Vol. 2, pp. 539-541.
[32] See Resolution dated 5 June 2017, Records, Vol. 2, pp. 692-694.

On 23 May 2017, the hearing on the Motion to Release ensued.[33] On 26 May 2017, petitioner filed its Formal Offer of Evidence for the Motion to Release,[34] which was resolved by this Court by admitting Exhibits "P-7", "P-8", "P-9", "P-10", "P-10-a", "P-11", "P-11-a", "P-12", "P-13", "P-14", "P-15", "P-16", "P-16-a", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22" and "P-23" while denying Exhibits "P-1", "P-1-a", "P-2", "P-3", "P-4", "P-5" and "P-6" for failure to properly mark. The parties were ordered to file their respective Memorandum, after which, the Motion to Release shall be deemed submitted for resolution.[35]

On 5 June 2017, respondent filed his Answer.[36]

On 20 June 2017, this Court issued a Notice of Pre-Trial Conference initially to be set on the 12th of September 2017, at 9:00 a.m.[37]

On 3 July 2017, both petitioner and respondent filed their respective Memorandum on the Motion to Release.[38]

On 13 July 2017, the DCC transmitted the BOC Records,[39] which was noted in a Minute Resolution dated 18 July 2017.[40]

On 15 August 2017, respondent submitted the Judicial Affidavit *(of Lorecel R. Ibanez, Chief of Staff of the District Collector of Customs, Limay, Bataan)* in support of his case.[41]

On 24 August 2017, petitioner filed a Manifestation informing that this Court's First Division granted the release of M/T Alpine Magnolia, which allegedly ship sided with M/Tkr. Malolos to smuggle fuel resulting in the present detention of the latter.[42]

In a Resolution dated 31 August 2017, this Court denied petitioner's Motion to Release.[43]

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[33] Records, Vol. 2, p. 542.
[34] Records, Vol. 2, pp. 545-691.
[35] See Resolution dated 20 June 2017, Records, Vol. 2, pp. 723-726.
[36] Records, Vol. 2, pp. 706-720.
[37] Records, Vol. 2, pp. 721-722.
[38] Respondent's Memorandum, Records, Vol. 2, pp. 744-765. Petitioner's Memorandum, Records, Vol. 2, pp. 766-792.
[39] Records, Vol. 2, p. 796.
[40] Records, Vol. 2, p. 797.
[41] See Judicial Affidavit (of Lorecel R. Ibanez, Chief of Staff of the District Collector of Customs, Limay, Bataan), Exhibit R-5, Records, Vol. 2, pp. 798-806.
[42] Records, Vol. 2-3, pp. 807-1031.
[43] Records, Vol. 3, pp. 1032-1042.

On 31 August 2017, respondent filed the Judicial Affidavit *(of Mr. Silvestre L. Martinez, Intelligence Officer I of the Customs Intelligence and Investigation Service, Bureau of Customs, Port of Limay, Bataan)* in support of his case.[44]

On 7 September 2017, respondent filed his Pre-Trial Brief[45] while petitioner filed its Pre-Trial Brief on 8 September 2017.[46] This Court then issued a Resolution, dated 14 September 2017, rescheduling the Pre-Trial Conference to 30 January 2018, at 9:00 a.m.[47]

On 25 September 2017, petitioner filed a Motion for Reconsideration *(of the Resolution dated 31 August 2017)* requesting the reconsideration of the denial of its Motion to Release. Petitioner alleged that it had duly established in evidence that it suffered and will continue to suffer substantial losses by reason of the detention of M/Tkr. Malolos.[48] This Court then issued a Resolution, dated 10 October 2017, requiring respondent to comment on the Motion for Reconsideration *(of the Resolution dated 31 August 2017).*[49]

On 18 October 2017, petitioner filed a Motion to Set for Hearing *(Motion for Reconsideration of the Resolution Dated 31 August 2017)* to further substantiate the allegations contained therein by presenting additional testimonial and documentary evidence to aid this Court in resolving the same.[50]

On 23 October 2017, respondent filed his Comment *(on the Motion for Reconsideration dated 22 September 2017),* alleging that the issues raised in the Motion for Reconsideration *(of the Resolution dated 31 August 2017)* have already been squarely passed upon in the Resolution, dated 31 August 2017, and there appears no cogent or compelling reason for the modification, much less reversal, of the same.[51]

On 20 November 2017, this Court issued a Resolution granting the Motion to Set for Hearing *(Motion for Reconsideration of the Resolution Dated 31 August 2017)* and deferring the resolution of the Motion for Reconsideration *(of the Resolution dated 31 August 2017)* until petitioner finishes the presentation and formal offer of its evidence in support of the same.[52]

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[44] See Judicial Affidavit of Mr. Silvestre L. Martinez, Exhibit R-6, Records, Vol. 3, pp. 1043-1055.
[45] Records, Vol. 3, pp. 1059-1066.
[46] Records, Vol. 3, pp. 1067-1080.
[47] Records, Vol. 3, pp. 1081-1082.
[48] Records, Vol. 3, pp. 1083-1175.
[49] Records, Vol. 3, pp. 1176-1177.
[50] Records, Vol. 3, pp. 1178-1184.
[51] Records, Vol. 3, pp. 1185-1186.
[52] Records, Vol. 3, pp. 1187-1190.

On 11 December 2017, petitioner filed an Urgent Motion praying that this Court allow M/Tkr. Malolos to be refueled upon compliance with the conditions set by the BOC, and to grant respondent the power to approve succeeding requests of petitioner to refuel M/Tkr. Malolos, transfer the same to a safer sheltering area in case of typhoon, and perform necessary vessel maintenance works, whenever the urgency and necessity of the situation requires it.[53] In a Resolution dated 9 January 2018, this Court granted the Urgent Motion.[54]

On 26 January 2018, petitioner submitted the Supplemental Judicial Affidavits of Ms. Clara F. Sapalo,[55] Capt. Javier P. Gocotano[56] and Ms. Irish P. Santos,[57] along with the documents identified therein, to support its Motion for Reconsideration *(of the Resolution dated 31 August 2017).*

On 30 January 2018, Pre-Trial commenced.[58]

The parties' Joint Stipulation of Facts and Issues was filed with the Court on 9 February 2018.[59]

Thereafter, a Pre-Trial Order was issued on 22 February 2018.[60]

On 28 February 2018, petitioner submitted the Judicial Affidavit of Mr. Apolonio P. Marfito, Jr. in support of its case.[61]

On 5 March 2018, petitioner filed a Motion to Amend *(the Pre-Trial Order dated 22 February 2018),* wherein it sought to amend the Pre-Trial Order, dated 22 February 2018, by including additional documentary evidence and the testimony of Mr. Apolonio P. Marfito, Jr. to support its case.[62]

During the 6 March 2018 hearing, petitioner presented its witnesses, Capt. Javier P. Gocotano, Ms. Irish P. Santos and Mr. Apolonio P. Marfito, Jr. Further, this Court ordered respondent to file a comment/opposition to petitioner's Motion to Amend *(the Pre-Trial Order dated 22 February 2018).*[63]

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[53] Records, Vol. 3, pp. 1191-1196.
[54] Records, Vol. 3, pp. 1200-1202.
[55] See Supplemental Judicial Affidavit of Ms. Clara F. Sapalo, Exhibit P-43, Records, Vols. 4-7, pp. 1207-3648.
[56] See Supplemental Judicial Affidavit of Capt. Javier P. Gocotano, Exhibit P-41, Records, Vol. 8, pp. 3649-3663.
[57] See Supplemental Judicial Affidavit of Ms. Irish P. Santos, Exhibit P-42, Records, Vol. 8, pp. 3664-3684.
[58] Records, Vol. 8, pp. 3688-3694.
[59] Records, Vol. 8, pp. 3700-3703.
[60] Records, Vol. 8, pp. 3716-3723.
[61] See Judicial Affidavit of Mr. Apolonio P. Marfito, Jr., Records, Vol. 8, pp. 3738-3817.
[62] Records, Vol. 8, pp. 3818-3827.
[63] Records, Vol. 8, pp. 3828-3830.

On 16 March 2018, respondent filed his Comment/Opposition *(Re: Motion to Amend the Pre-Trial Order dated 22 February 2018).*[64] Petitioner then filed its Reply *(To the Comment/Opposition dated 08 March 2018)* on 26 March 2018.[65] On 16 April 2018, this Court issued a Resolution granting the Motion to Amend *(the Pre-Trial Order dated 22 February 2018)* in the interest of substantial justice.[66]

During the 17 April 2018 hearing, petitioner presented its witness, Ms. Clara F. Sapalo. Likewise, this Court ordered petitioner to file its Formal Offer of Evidence for the Motion for Reconsideration *(of the Resolution dated 31 August 2017)* and respondent to file his Comment/Opposition thereto.[67] On 20 April 2018, petitioner filed its Formal Offer of Evidence for the Motion for Reconsideration *(of the Resolution dated 31 August 2017).*[68] On 26 April 2018, petitioner filed its Comment *(re: Petitioner's Formal Offer of Evidence dated April 20, 2018).*[69]

On 9 May 2018, this Court issued the Amended Pre-Trial Order.[70]

In a Resolution dated 23 May 2018, this Court resolved petitioner's Formal Offer of Evidence for the Motion for Reconsideration *(of the Resolution dated 31 August 2017)* by admitting Exhibits "P-2-A", "P-3-A", "P-4-A", "P-5-A", "P-6-A", "P-24", "P-24-A", "P-25", "P-25-A", "P-26", "P-26-A", "P-27", "P-27-A", "P-28", "P-29", "P-30", "P-30-A", "P-30-A-1", "P-30-B", "P-30-B-1", "P-30-C", "P-30-C-1", "P-30-D", "P-30-D-1", "P-30-E", "P-30-E-1", "P-30-F", "P-30-F-1", "P-30-G", "P-30-G-1", "P-30-H", "P-30-H-1", "P-30-I", "P-30-I-1", "P-30-J", "P-30-J-1", "P-30-K", "P-30-K-1", "P-30-L", "P-30-L-1", "P-31-A", "P-31-B", "P-31-C", "P-31-D", "P-31-E", "P-31-F", "P-31-G", "P-31-H", "P-31-I", "P-31-J", "P-31-K", "P-31-L", "P-31-M", "P-31-N", "P-32", "P-33", "P-33-A", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", and "P-44", and noting: 1) the incorrect description of Exhibits "P-27" and "P-27-A", and 2) petitioner's failure to offer Exhibits "P-42-a", "P-43-a" and "P-44-a." Further, this Court ordered the parties to file their respective Memoranda.[71]

On 29 May 2018, petitioner filed a Motion for Issuance of Subpoena against its hostile witness, the DCC, Mr. Julius B. Premediles,[72] which was granted by this Court.[73] The DCC then filed a Motion to Quash *Subpoena Ad Testificandum* with Formal Entry of Appearance ("Motion to Quash"),[74] to

[64] Records, Vol. 8, pp. 3842-3847.
[65] Records, Vol. 8, pp. 3848-3853.
[66] Records, Vol. 8, pp. 3871-3875.
[67] Records, Vol. 8, pp. 3876-3878.
[68] Records, Vols. 8-14, pp. 3879-6404.
[69] Records, Vol. 14, pp. 6412-6423.
[70] Records, Vol. 14, pp. 6424-6434.
[71] Records, Vol. 14, pp. 6436-6437.
[72] Records, Vol. 14, pp. 6438-6444.
[73] See Resolution dated 21 June 2018, Records, Vol. 14, pp. 6527-6528.
[74] Records, Vol. 14, pp. 6554-6562.

which petitioner filed a Comment/Opposition *(to the Motion to Quash Subpoena Ad Testificandum)*[75] after being ordered to do so by this Court.[76]

In compliance with the Resolution, dated 23 May 2018, petitioner filed its Memorandum on 11 June 2018.[77] On the other hand, respondent filed his Memorandum *(Re: Motion for Reconsideration dated September 22, 2017)* on 20 June 2018.[78]

On 11 July 2018, this Court issued a Resolution granting petitioner's Motion for Reconsideration *(of the Resolution dated 31 August 2017),* and ordered the release of M/Tkr. Malolos, upon the filing of a surety bond.[79] This Court found that the continued detention of M/Tkr. Malolos had adverse effects to petitioner financially, and the government's interest would be adequately protected by the filing of a surety bond. On 20 July 2018, petitioner complied with the requirements for the release of M/Tkr. Malolos (*i.e.*, posting of the required surety bond in the amount of fifty eight million nine hundred thirty two thousand pesos (Php58,932,000.00)).[80] Having complied with the requirements provided in the Resolution dated 11 July 2018, this Court ordered the release of M/Tkr. Malolos.[81]

During the 30 July 2018 hearing, petitioner manifested that it will be adopting the testimonies of Capt. Javier P. Gocotano, Ms. Clara F. Sapalo, Ms. Irish P. Santos and Mr. Apolonio P. Marfito in the Motion to Release and Motion for Reconsideration *(of the Resolution dated 31 August 2017)* as testimonial evidence for the main case. Respondent also manifested that he will no longer conduct cross-examination on said witnesses.[82]

On 31 July 2018, respondent filed his Motion for Reconsideration *(Re: Resolution dated 11 July 2018).*[83]

Due to respondent's failure to timely release M/Tkr. Malolos, petitioner filed an Urgent Motion for Issuance of a Show Cause Order ("Motion to Show Cause") on 10 August 2018,[84] which respondent was ordered to comment on.[85]

After being required to comment on respondent's Motion for Reconsideration *(Re: Resolution dated 11 July 2018),*[86] petitioner filed a

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[75] Records, Vol. 15, pp. 6669-6675.
[76] See Resolution dated 27 July 2018, Records, Vol. 14, pp. 6604-6606.
[77] Records, Vol. 14, pp. 6446-6494.
[78] Records, Vol. 14, pp. 6500-6526.
[79] Records, Vol. 14, pp. 6536-6553.
[80] See Manifestation and Compliance, Records, Vol. 14, pp. 6563-6604.
[81] See Resolution dated 2 August 2018, Records, Vol. 15, pp. 6623-6626.
[82] Records, Vol. 14, pp. 6607-6609.
[83] Records, Vol. 14, pp. 6610-6622.
[84] Records, Vol. 15, pp. 6629-6644.
[85] See Resolution dated 16 August 2018, Records, Vol. 15, pp. 6645-6647.
[86] See Resolution dated 6 August 2018, Records, Vol. 15, pp. 6627-6628.

Comment/Opposition *(to Respondent's Motion for Reconsideration dated 30 July 2018)* on 20 August 2018.[87]

In a Resolution dated 23 August 2018, this Court denied the Motion to Quash and the Motion for Reconsideration *(Re: Resolution dated 11 July 2018).*[88]

During the 28 August 2018 hearing, the parties stipulated that the DCC testified in CTA Case No. 9554 before this Court's First Division and that Exhibit "P-45" was the Transcript of Stenographic Notes ("TSN") of his testimony during the 25 April 2017 hearing in said case.[89] Considering this, the DCC's testimony was dispensed with. After the oral Supplemental Formal Offer of Evidence of Exhibit "P-45" as well as petitioner's adoption of his Formal Offer of Evidence for the Motion to Release and Formal Offer of Evidence for the Motion for Reconsideration *(of the Resolution dated 31 August 2017)* without objections from respondent, all exhibits offered as evidence by petitioner were admitted by this Court for purposes of deciding the main case, subject to final appreciation of the same.[90]

On 3 September 2018, petitioner filed a Manifestation *(Re: Urgent Motion for Issuance of a Show Cause Order)* stating that M/Tkr. Malolos has been released by respondent and as such, petitioner will no longer be pursuing the Motion to Show Cause,[91] which was noted by this Court in a Resolution dated 18 September 2018.[92]

During the 6 November 2018 hearing, respondent presented his witnesses, namely: Ms. Lorecel R. Ibanez and Mr. Silvestre L. Martinez. Thereafter, this Court ordered respondent to file a Formal Offer of Evidence and petitioner to comment thereto, and upon receipt of the resolution on respondent's Formal Offer of Evidence, both parties were required to file their respective Memorandum.[93]

On 13 November 2018, respondent filed his Formal Offer of Evidence.[94] Subsequently, petitioner filed its Comment/Objections *(To: Respondent's Formal Offer of Evidence).*[95] In a Resolution dated 19 February 2019, this Court resolved to admit Exhibits "R-1", "R-2" inclusive of submarking "R-2-A", "R-3" inclusive of submarkings "R-3-A"; "R-3-B"; "R-3-C" and "R-3-D", "R-4" inclusive of submarkings "R-4-A" and "R-4-B", "R-5" inclusive of submarking "R-5-A", and "R-6" "inclusive of submarking

[87] Records, Vol. 15, pp. 6649-6668.
[88] Records, Vol. 15, pp. 6676-6681.
[89] Records, Vol. 2-3, pp. 870-1031.
[90] Records, Vol. 15, pp. 6682-6683.
[91] Records, Vol. 15, pp. 6684-6688.
[92] Records, Vol. 15, pp. 6706-6708.
[93] Records, Vol. 15, pp. 6709-6711.
[94] Records, Vol. 15, pp. 6712-6737.
[95] Records, Vol. 15, pp. 6739-6743.

"R-6-A" subject to this Court's final evaluation and appreciation of its purposes, materiality, relevancy and probative value to the issues involved in the case. The parties were then ordered to file their respective memorandum.[96]

On 19 March 2019, petitioner filed an Omnibus Motion for Leave of Court: a. To Ship-break or Dismantle M/T Malolos; and b. To Reduce Surety Bond ("Omnibus Motion")[97] on the ground that M/Tkr. Malolos has severely depleted in value as a result of its detention. On 26 March 2019, this Court issued a Resolution requiring respondent to comment thereto.[98] Respondent thereafter filed a Motion for Extension of Time to File Comment,[99] which was granted by this Court in an Order dated 6 May 2019.[100] Thereafter, respondent filed four (4) Motions for Further Extension of Time to File Comment/Opposition on 8 May 2019, 14 May 2019, 20 May 2019 and 27 May 2019, respectively, which were all denied by this Court.[101] Respondent's Comment/Opposition *(Omnibus Motion for Leave of Court: a. To Ship-break or Dismantle M/T Malolos; and b. To Reduce Surety Bond dated March 19, 2019)* which was eventually filed on 30 May 2019[102] was rendered moot and academic.[103]

In compliance with the Resolution dated 19 February 2019, petitioner submitted its Memorandum on 29 March 2019.[104] On the other hand, a Motion to Suspend Period to File Memorandum was filed by respondent on 28 March 2019 alleging that the pendency of the Omnibus Motion will affect the final disposition of the case. Hence, it should first be resolved before he files a Memorandum.[105] In a Resolution dated 11 April 2019, this Court denied the same but respondent was given a fresh period of ten (10) days from receipt within which to file his Memorandum.[106]

On 23 May 2019, this Court issued a Resolution granting the Omnibus Motion. Petitioner was allowed to ship-break or dismantle M/Tkr. Malolos, and reduce the amount of surety bond was reduced to Twenty Four Million Eight Hundred Ninety Seven Thousand Pesos (Php24,897,000.00).[107] On 6 June 2019, petitioner filed an *Ex Parte* Manifestation and Compliance with the requirements set forth in the 23 May 2019 Resolution.[108] Respondent thereafter filed a Motion for Reconsideration *(of Resolution dated 23 May 2019).*[109]

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[96] Records, Vol. 15, pp. 6745-6746.
[97] Records, Vol. 15, pp. 6747-6766.
[98] Records, Vol. 15, pp. 6767-6768.
[99] Records, Vol. 15, pp. 6847-6851.
[100] Records, Vol. 15, p. 6852.
[101] See Resolution dated 23 May 2019, Records, Vol. 15, pp. 6866-6872; See Resolution dated 20 June 2019, Records, Vol. 15, pp. 6963-6970.
[102] Records, Vol. 15, pp. 6953-6962.
[103] See Resolution dated 20 June 2019, Records, Vol. 15, pp. 6963-6970.
[104] Records, Vol. 15, pp. 6769-6879.
[105] Records, Vol. 15, pp. 6831-6836.
[106] Records, Vol. 15, pp. 6839-6841.
[107] Records, Vol. 15, pp. 6866-6872.
[108] Records, Vol. 15, pp. 6892-6934.
[109] Records, Vol. 15, pp. 6953-6962.

On 24 May 2019, respondent filed a Motion for Further Extension of Time to File Memorandum[110] and another Motion for Further Extension of Time to File Memorandum on 6 June 2019.[111] In a Resolution dated 20 June 2019, respondent's requests for additional time to file Memorandum were all denied by this Court, while the Court noted petitioner's *Ex Parte* Manifestation and Compliance.[112]

Meanwhile, in a Resolution dated 2 July 2019, this Court ordered petitioner to file a comment on respondent's Motion for Reconsideration *(of Resolution dated 23 May 2019),*[113] which was complied with by petitioner.[114]

On 8 July 2019, respondent sought reconsideration of the Resolution, dated 20 June 2019, by filing an Omnibus Motion *(for (1) Reconsideration of the Resolution dated 21 June 2019 and (2) Leave to Admit Attached Memorandum),*[115] from which petitioner filed a Comment/Opposition *(to the Omnibus Motion for (1) Reconsideration of the Resolution dated 21 June 2019 and (2) Leave to Admit Attached Memorandum).*[116]

In a Resolution dated 8 August 2019, this Court denied respondent's Motion for Reconsideration *(of Resolution dated 23 May 2019)* and Omnibus Motion *(for (1) Reconsideration of the Resolution dated 21 June 2019 and (2) Leave to Admit Attached Memorandum)* submitting the case for final decision.[117]

On 4 December 2019, petitioner filed a Motion for Early Resolution and a Notice of Change of Firm Name.[118]

On 19 June 2020, petitioner filed an Ex-Parte Second (2nd) Motion for Early Resolution.[119]

Hence, this Decision.

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[110] Records, Vol. 15, pp. 6887-6891.
[111] Records, Vol. 15, pp. 6935-6939.
[112] Records, Vol. 15, pp. 6963-6970.
[113] Records, Vol. 15, pp. 6971-6972.
[114] See Comment/Opposition *(To the Motion for Reconsideration dated 07 June 2019)*, Records, Vol. 15, pp. 7012-7030.
[115] Records, Vol. 15, pp. 6973-7011.
[116] Records, Vol. 15, pp. 7031-7037.
[117] Records, Vol. 15, pp. 7039-7048.
[118] Records.
[119] Records.

The Issues

WHETHER OR NOT PETITIONER HAS STANDING OR PERSONALITY TO SUE IN THE INSTANT CASE; AND

WHETHER OR NOT M/T MALOLOS VIOLATED THE PROVISIONS OF REPUBLIC ACT 10863 ALSO KNOWN AS THE CUSTOMS MODERNIZATION AND TARIFF ACT (CMTA) PARTICULARLY SECTIONS 1113, PARAGRAPHS (A), (E), (K), (L), SUBPARAGRAPH (1) THEREOF. [120]

Arguments of the Parties

Petitioner's Arguments

Petitioner averred the following in its Memorandum:

a) Respondent, by affirming the decision of the DCC, seriously erred in relying on the presumption of regularity in the performance of official functions to justify the issuance of the WSD;

b) Respondent, by affirming the DCC's decision, seriously erred in not ruling that M/Tkr. Malolos may not be seized and forfeited for being a common carrier; and

c) Respondent, by affirming the DCC's decision, seriously erred in ruling that M/Tkr. Malolos has participation and knowledge in the alleged fuel smuggling activity.[121]

Respondent's Counter-Arguments

As respondent failed to timely file his memorandum, the allegations he set forth in his Answer were considered in deciding the present Petition for Review. In the Answer, respondent alleged the following:

a) The contention that M/Tkr. Malolos is a common carrier, hence not subject to seizure, would render inoperative the power of customs authorities to halt smuggling activities and other unlawful conduct under the ***CMTA;***

b) M/Tkr. Malolos was seized after finding of probable cause for violation of Section 1113, paragraphs (a), (e), (k), (l) of the ***CMTA;***

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[120] See issues in the Amended Pre-Trial Order; Records, Vol. 14, p. 6426.
[121] See Discussion in petitioner's Memorandum; Records, Vol. 15, pp. 6777-6813.

c) The issuance of the WSD has the presumption of regularity in the absence of ill-motive or bad faith on the part of the public official issuing the same; and

d) The burden of proof in forfeiture proceedings lies with the claimant.[122]

The Ruling of the Court

We GRANT the Motion for Early Resolution and Ex-Parte Second (2^{nd}) Motion for Early Resolution by petitioner and rule to GRANT the instant Petition for Review.

Petitioner has legal capacity and *locus standi* to institute the Petition for Review.

The first issue raised in the Amended Pre-Trial Order questions petitioner's legal capacity and legal standing to institute the Petition for Review. On this, We rule in the affirmative.

Sections 1 and 2, Rule 3 of the 1997 Rules of Civil Procedure reads:

> SECTION 1. Who may be parties; plaintiff and defendant. – **Only natural or juridical persons, or entities authorized by law may be parties in a civil action.** The term "plaintiff" may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.) -party plaintiff. The term "defendant" may refer to the original defending party, the defendant in a counterclaim, the cross-defendant, or the third (fourth, etc.) -party defendant.
>
> SECTION 2. Parties in interest. – A real party in interest is the party who stands to be **benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.** Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.
> (Emphasis, Ours)

Following these provisions, only natural or juridical persons, or entities authorized by law, who will be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit may prosecute or defend any action.

[122] Respondent failed to file a memorandum but the Special and Affirmative Defenses he raised in his Answer provide arguments for his case; Records, Vol. 2, pp. 709-717.

In the case at bar, it cannot be denied that any judgment on the detention of M/Tkr. Malolos will stand to benefit or injure petitioner since it is its rightful owner and operator, as shown by its Certificate of Public Convenience.[123]

Further, in the Joint Stipulation of Facts and Issues, the parties have stipulated that petitioner is "a domestic corporation engaged in the business of hauling, shipping and/or transporting oil and petroleum products of its customers in Philippine waters."[124] As such, it is a juridical person allowed as a party in a civil action.

Being a juridical person who stands to be benefitted or injured by a judgment on the detention of M/Tkr. Malolos, petitioner has legal capacity to prosecute the instant Petition for Review.

Aside from possessing legal capacity to prosecute the Petition for Review, petitioner also has legal standing or *locus standi* to file the same.

Locus standi or legal standing, which is typically an issue raised in petitions questioning the validity or constitutionality of governmental acts, refers to "a personal and substantial interest in the case such that the party has sustained or will sustain a direct injury as a result of the governmental act that is being challenged. The term 'interest' means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[125]

As the owner and operator of M/Tkr. Malolos, petitioner has a personal, substantial and material interest in the Petition for Review since it has already sustained direct injury from the detention of said ship through respondent's issuance of a WSD, and will further suffer from a decision affirming the validity of said WSD.

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[123] Records, Vol. 1, pp. 397-407.
[124] Records, Vol. 8, pp. 3700-3703, in relation to Amended Pre-Trial Order, Records, Vol. 1, pp. 397-407.
[125] *Association of Flood Victims and Jaime Aguilar Hernandez v. COMELEC, et al.*, G.R. No. 203775, 5 August 2014, *citing Integrated Bar of the Philippines v. Hon. Zamora*, G.R. No. 141284, 15 August 2004.

There are two (2) distinct and independent exemptions from forfeiture under the *CMTA*, which are: a) common carriers, which have not been chartered or leased, and b) lack of knowledge of the unlawful act by the owner or agent of the conveyance.

In his Answer, respondent alleges that the contention that M/Tkr. Malolos is a common carrier, hence not subject to seizure, would render inoperative the power of customs authorities to halt smuggling activities and other unlawful conduct under the ***CMTA.*** Moreover, respondent avers that the burden of proof lies with petitioner to prove its non-involvement in the alleged fuel smuggling act, and petitioner miserably failed to discharge this burden.

We agree with respondent as to the first argument but disagree as to the second argument.

Properties subject to forfeiture are identified under ***Sections 1113 and 1114 of the CMTA,*** which provide, as follows:

> Section 1113. Property Subject to Seizure and Forfeiture. —
>
> Property that shall be subject to seizure and forfeiture include:
>
> (a) Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of goods or in conveying or transporting smuggled goods in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of smuggled goods in commercial quantities shall subject such vehicle, vessel, aircraft, or any other craft to forfeiture: **Provided, That the vehicle, vessel, aircraft or any other craft is not used as a common carrier which has been chartered or leased for purposes of conveying or transporting persons or cargo;**
>
> (b) Any vessel engaging in the coastwise trade which shall have on board goods of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such goods having been properly entered or legally imported;
>
> (c) Any vessel or aircraft into which shall be transferred cargo unloaded contrary to law prior to the arrival of the importing vessel or aircraft at the port of destination;
>
> (d) Any part of the cargo, stores, or supplies of a vessel or aircraft arriving from a foreign port which is unloaded before

arrival at the vessel's or aircraft's port of destination and without authority from the customs officer; but such cargo, ship, or aircraft stores and supplies shall not be forfeited if such unloading was due to accident, stress of weather, or other necessity and is subsequently approved by the District Collector;

(e) Goods which are fraudulently concealed in or removed contrary to law from any public or private warehouse, container yard, or container freight station under customs supervision;

(f) Goods, the importation or exportation of which are effected or attempted contrary to law, or any goods of prohibited importation or exportation, and all other goods which, in the opinion of the District Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;

(g) Unmanifested goods found on any vessel or aircraft if manifest therefor is required;

(h) Sea stores or aircraft stores adjudged by the District Collector to be excessive, when the duties and taxes assessed by the District Collector thereon are not paid or secured forthwith upon assessment of the same;

(i) Any package of imported goods which is found upon examination to contain goods not specified in the invoice or goods declaration including all other packages purportedly containing imported goods similar to those declared in the invoice or goods declaration to be the contents of the misdeclared package;

(j) Boxes, cases, trunks, envelopes, and other containers of whatever character used as receptacle or as device to conceal goods which are subject to forfeiture under this Act or which are so designed as to conceal the character of such goods;

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

(l) Goods sought to be imported or exported:

(1) Without going through a customs office, whether the act was consummated, frustrated, or attempted;

(2) Found in the baggage of a person arriving from abroad and undeclared by such person;

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

(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 goods; or

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

Section 1114. Properties not Subject to Forfeiture in the Absence of Prima Facie Evidence. —

The forfeiture of the vehicle, vessel, or aircraft shall not be effected if it is established that the owner thereof or the agent in charge of the means of conveyance used as aforesaid has no knowledge of or participation in the unlawful act: Provided, That a prima facie presumption shall exist against the vehicle, vessel, or aircraft under any of the following circumstances:

(a) If the conveyance has been used for smuggling before;

(b) If the owner is not in the business for which the conveyance is generally used; and

(c) If the owner is not financially in a position to own such conveyance.

(Emphasis, Ours)

A perusal of ***Section 1113 of the CMTA*** would show a conflict between its ***subparagraph (a) and (k),*** as to what type of common carrier is exempt from forfeiture, *viz*:

Subparagraph (a)	***Subparagraph (k)***
(a) Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of goods or in conveying or transporting smuggled goods in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of smuggled goods in commercial quantities shall subject such vehicle, vessel, aircraft, or any other craft to forfeiture: **Provided, That the vehicle, vessel, aircraft or any other craft <u>is not used as a common carrier which has been chartered or leased for purposes of conveying or transporting persons or cargo;</u>** (Emphasis and Underscoring, Ours)	(k) Any conveyance actually used for the transport of goods subject to forfeiture under this Act, with its equipage or trappings, and any vehicle similarly used, together with its equipment and appurtenances. The mere conveyance of smuggled goods by such transport vehicle shall be sufficient cause for the outright seizure and confiscation of such transport vehicle but **the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, <u>is engaged as common carrier and not chartered or leased,</u>** or that the agent in charge thereof at the time, has no knowledge of the unlawful act; (Emphasis and Underscoring, Ours)

Section 1113 (a) of the CMTA exempts from forfeiture common carriers which have been chartered or leased. On the other hand, ***Section 1113 (k) of the CMTA*** exempts from forfeiture common carriers which were not chartered or leased. While ***subparagraph (a)*** is limited to any **<u>vehicle, vessel or aircraft,</u>** which was used unlawfully in the importation or exportation of goods or in conveying or transporting smuggled goods in commercial quantities into or from any Philippine port or place, ***subparagraph (k)*** involves **<u>any conveyance</u>** actually used for the transport of goods subject to forfeiture under this Act, with its equipage or trappings, **<u>and any vehicle</u>** similarly used, together with its equipment and appurtenances. In essence, any vehicle, vessel or aircraft that fall under ***subparagraph (a)*** similarly fall under ***subparagraph (k),*** which pertain to any conveyance or vehicle used for the transport of goods subject to forfeiture under the ***CMTA.*** Hence, there is a conflict between the two subparagraphs as to what common carrier is exempt from forfeiture, chartered or not.

One of the most important rules in statutory construction dictates that laws should be construed in a manner that avoids absurdity or unreasonableness. This was explained by the High Court, as follows:

> "Nothing is better settled then that courts are **not to give words a meaning which would lead to absurd or unreasonable consequence.** That is a principle that goes back to In re Allen decided on October 29, 1903, where it was held that **a literal interpretation is to be rejected if it would be unjust or lead to absurd results.** That is a strong argument against its

> adoption. The words of Justice Laurel are particularly apt. Thus: '**The fact that the construction placed upon the statute by the appellants would lead to an absurdity is another argument for rejecting it x x x.'**
>
> **It is of the essence of judicial duty to construe statutes so as to avoid such a deplorable result. That has long been a judicial function. A literal reading of a legislative act which could be thus characterized is to be avoided if the language thereof can be given a reasonable application consistent with the legislative purpose.** In the apt language of Frankfurter: "A decent respect for the policy of Congress must save us from imputing to it a self-defeating, if not disingenuous purpose. **Certainly, we must reject a construction that at best amounts to a manifestation of verbal ingenuity but hardly satisfies the test of rationality on which law must be based."**[126]
>
> (Emphasis, Ours)

Consequently, the exemption from forfeiture under ***Section 1113 (a) of the CMTA*** (*i.e.,* common carriers which are chartered or leased) should not be taken in its ordinary acceptation, but should be construed in a way that it exempts common carriers which have not been chartered or leased.

It is highly illogical and absurd to exempt from forfeiture common carriers, which have been chartered or leased, and subject to forfeiture common carriers, which are not chartered or leased, as what is being mandated by ***Section 1113 of the CMTA***. Common carriers, which have been chartered or leased, typically transport bulks of identical or similar goods for one or few customers only which gives them the opportunity to inquire about and obtain knowledge of the goods that they are hauling. They can easily determine whether the taxes and duties due on the goods which they have been contracted to deliver have been paid, or if the owner of the goods complied with the ***CMTA***. Contrarily, common carriers, which have not been chartered or leased, essentially service a huge number of customers who are seeking to have their small parcels, containing different goods, delivered. Hence, it is highly impossible for them to determine the nature of the goods that they are paid to transport (*i.e.,* whether the proper taxes and duties have been paid thereon or no violation of the provisions of the ***CMTA*** was committed with respect to these goods). Since a common carrier, which has been chartered or leased, has a better opportunity and ability to determine whether the taxes and duties due on the goods that they are transporting have been paid, or if the provisions of the ***CMTA*** have been complied with respect to these goods, it must be the one that may be forfeited rather than a common carrier, which has not been chartered or leased, considering that the latter has absolutely no

[126] *Microsoft Corporation v. Rolando D. Manansala and/or Mel Manansala, doing business as DATAMAN TRADING COMPANY and/or COMIC ALLEY,* G.R. No. 166391, 21 October 2015, *citing Automotive Parts & Equipment Company, Inc. v. Lingad,* G.R. No. L-26406, 31 October 1969.

opportunity to check each and every parcel by its numerous customers. Logically, due to the absolute inability of a common carrier, which has not been chartered or leased, to check on the compliance of each and every parcel of its numerous customers with the provisions of the ***CMTA,*** it must be the one given an exemption from forfeiture.

Considering the foregoing, ***Section 1113 of the CMTA*** must be read to provide two (2) exceptions from seizure, detention and forfeiture, which are:

a) that the owner of the means of conveyance used is engaged as a common carrier, which has not been chartered or leased, or

b) that the owner or agent in charge thereof at the time has no knowledge of or participation in the unlawful act.

Clearly, petitioner's allegation (that since it is a common carrier, its vessels are immediately exempt from forfeiture) is misplaced. Other than presenting evidence that it is a common carrier, petitioner must similarly prove that it acted as such without entering into a charter agreement to be exempt from seizure, detention, and forfeiture.

In the case at bar, petitioner entered into a charter agreement with SL as shown by the testimonies of Ms. Clara F. Sapalo,[127] and Ms. Irish P. Santos,[128] its Certificate of Public Convenience,[129] the fixture notes executed with SL in relation to its Consecutive Voyage Agreement with SL,[130] and the fixture notes executed with Petron Corporation.[131] Thus, it cannot lay claim to the first exemption from forfeiture under ***Section 1113 of the CMTA*** (*i.e.,* that the owner of the means of conveyance used is engaged as a common carrier, which has not been chartered or leased).

Nonetheless, petitioner qualifies under the second exemption from forfeiture under ***Section 1113 of the CMTA*** (*i.e.,* that the owner or agent in charge thereof at the time has no knowledge of or participation in the unlawful act).

Section 1114 of the CMTA amplifies the second exemption from forfeiture. It only applies to cases wherein the conveyance involved does not fall under the first exemption from forfeiture (*i.e.,* not a common carrier, which has not been chartered or leased) considering that mere proof that the owner of the conveyance used is a common carrier, which has not been chartered or leased, already exempts a conveyance from seizure, detention and forfeiture.

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[127] See Judicial Affidavit of Ms. Clara F. Sapalo, Exhibit P-11, Records, Vol. 1, pp. 314-353.
[128] See Judicial Affidavit of Ms. Irish P. Santos, Exhibit P-16, Records, Vol. 1, pp. 378-420.
[129] See Exhibit P-17, Records, Vol. 1, pp. 397-407.
[130] See Exhibits P-18 and P-20, Records, Vol. 1, pp. 408-414; and Exhibit P-19, Records, Vol. 2, p. 685.
[131] See Exhibits P-21, P-22 and P-23, Records, Vol. 1, pp. 415-418.

The said provision provides that the forfeiture of the conveyance shall not be effected if it is established that the owner or the agent in charge of the conveyance used has no knowledge of or participation in the unlawful act, and that forfeiture would be effected if there is prima facie evidence against the vessel, which arises:

a) if the conveyance has been used for smuggling before;

b) if the owner is not in the business for which the conveyance is generally used; and

c) if the owner is not financially in a position to own such conveyance.

As such, respondent must first prove the existence of any of the circumstances that create a *prima facie* presumption that petitioner has knowledge of or participation in the unlawful act under ***Section 1114 of the CMTA*** before petitioner can be burdened with a duty to prove its non-involvement with an alleged smuggling activity or other unlawful act.

Unfortunately, no evidence was presented by respondent showing any of such circumstances that would result into a *prima facie* presumption of knowledge of or participation in an unlawful activity. Thus, the outright detention of M/Tkr. Malolos had no leg to stand on. Nonetheless, to foreclose any doubt in respondent's mind, this Court will discuss hereunder that no fuel smuggling via loop loading occurred in the instant case, and even assuming that one occurred, petitioner had neither any knowledge of nor participation in the same.

No fuel smuggling occurred in the case at bar.

A review of the evidence would show that no fuel smuggling via loop loading occurred in the case at bar.

Respondent heavily relies on the Cargo Outturn Certificate[132] and the testimonies of Ms. Lorecel R. Ibanez[133] and Mr. Silvestre L. Martinez[134] to prove its claim of loop loading between M/T Alpine Magnolia and M/Tkr. Malolos. These, however, are bereft of any probative value.

[132] Exhibit R-1, Records, Vol. 2, p. 803.
[133] See Judicial Affidavit (of Lorecel R. Ibanez, Chief of Staff of the District Collector of Customs, Limay, Bataan), Exhibit R-5, Records, Vol. 2, pp. 798-806; in relation to *TSN for 6 November 2018 hearing,* pp. 11-12.
[134] See Judicial Affidavit of Mr. Silvestre L. Martinez, Exhibit R-6, Records, Vol. 3, pp. 1043-1055; in relation to *TSN for 6 November 2018 hearing,* pp. 27-28.

During the cross-examination of Ms. Lorecel R. Ibanez, she initially said that the fuel and petroleum products from M/T Alpine Magnolia were not discharged at SL's tanks located in its terminal at Limay, Bataan.[135] However, when she was presented with the TSN of her testimony during the 11 May 2017 hearing in CTA Case No. 9554, she changed her narrative and said that some of the fuel and petroleum products were in fact discharged at tank L in SL's terminal at Limay, Bataan.[136]

Ms. Lorecel R. Ibanez's admission that some of the fuel and petroleum products were in fact discharged at SL's tanks located in its terminal at Limay, Bataan runs contrary to respondent's position that the fuel and petroleum products were in fact loop loaded from M/T Alpine Magnolia to M/Tkr. Malolos. In essence, Ms. Lorecel R. Ibanez's testimony affirms petitioner's version of facts that M/Tkr. Malolos loaded fuel and petroleum products from SL's terminal at Limay, Bataan[137] and not directly, while ship sided, from M/T Alpine Magnolia. This coincides with Capt. Javier P. Gocotano's testimony during cross-examination that he never saw any ship or ships come near M/Tkr. Malolos prior to 20 December 2016.[138]

Further, during her cross-examination, Ms. Lorecel R. Ibanez said that when she and her team went to SL's terminal at Limay, Bataan to inform SL to stop the discharging of fuel products because of an impending alert order, she was able to talk to a certain Mr. Eric Estanislao, who in turn gave her the Cargo Outturn Certificate. But when she was asked as to who prepared the said Cargo Outturn Certificate, Ms. Lorecel R. Ibanez replied that she had no knowledge of who prepared the said document, *viz:*

> "ATTY. FETIZANAN
>
> Q: Now, who are you able to talk to at the SL Harbor?
>
> MS. IBANEZ
>
> A: Mr. Eric Estanislao.
>
> ATTY. FETIZANAN
>
> Q: And what was the nature of your conversation based on your recollection?
>
> MS. IBANEZ

[135] See *TSN for 6 November 2018 hearing,* pp.16-18.
[136] See *TSN for 6 November 2018 hearing,* pp.18-21.
[137] See Judicial Affidavit of Capt. Javier P. Gocotano, Exhibit P-10, Records, Vol. 1, pp. 358-359.
[138] See *TSN for 23 May 2017 hearing,* Records, Vol. 3, p. 1119.

A: Based on my recollection, we arrived at his office and then talked to him saying that please stop the discharging as per instruction of the District Collector because of an impending Alert Order, which will hopefully coming out that day.

ATTY. FETIZANAN

Q: And then, Mr. Estanislao supposedly gave you this Cargo Outturn Certificate. Now, do you agree with me that this Cargo Outturn Certificate were prepared entirely by SL Harbor, is that correct?

MS. IBANEZ

A: Mr. Estanislao gave us the Cargo Outturn Certificate. I do not know who prepared that.

ATTY. FETIZANAN

Q: **So, you have no personal knowledge on the circumstances on the preparation of the Cargo Outturn Certificate? You have no knowledge of the veracity of the contents of the Cargo Outturn Certificate, correct?**

MS. IBANEZ

A: **Yes."** [139]
(Emphasis, Ours)

Moreover, Ms. Lorecel R. Ibanez testified during cross-examination that she did not discuss or clarify the contents of the Cargo Outturn Certificate with anyone from SL.[140] Particularly, she did not confer and discuss the same with Mr. Eric Estanislao, the alleged source of said document, *viz:*

"ATTY. FETIZANAN

Q: My question, Ms. Witness, is did you discuss with Mr. Estanislao the contents of the Cargo Outturn Certificate?

MS. IBANEZ

A: No."[141]

Consequently, the Cargo Outturn Certificate cannot be given probative value to establish the alleged loop loading incident. Without presenting the person who actually prepared the Cargo Outturn Certificate, the information

[139] See *TSN for 6 November 2018 hearing*, pp. 22-23.
[140] See *TSN for 6 November 2018 hearing*, pp. 23-25.
[141] *Id.*, p. 25.

contained therein is hearsay. It is hearsay since Ms. Lorecel R. Ibanez, the witness who identified the Cargo Outturn Certificate, was incompetent to testify on the veracity of its contents as she did not prepare the said document.[142] At best, the Cargo Outturn Certificate may be considered only as *prima facie* evidence of its due execution and date of issuance but it does not constitute *prima facie* evidence of the facts or information stated therein.[143] Hearsay evidence, whether objected to or not, has no probative value.[144]

On the other hand, in his Judicial Affidavit, Mr. Silvestre L. Martinez said that his basis in saying that M/Tkr. Malolos violated ***Section 1113, par. (a), (e), (k) and (l) of the CMTA*** are the documentary inconsistencies as to whether the vessel involved is M/T Green Point or M/T Alpine Magnolia and the requisite Load Port Survey ("LPS") under Customs Memorandum Order No. 18-2010.[145] Notably, however, respondent did not present and offer in evidence the said LPS or any other documents aside from those listed in his Formal Offer of Evidence.[146] Basic is the rule that evidence which a party desires to submit for the consideration of this Court must be formally offered by the party, otherwise, it is excluded and rejected.[147]

Even if the LPS has been formally offered, the same cannot still be given probative weight by this Court in ruling that M/Tkr. Malolos committed acts in violation of ***Sections 1113, par. (a), (e), (k) and (l) of the CMTA.*** During his cross examination, Mr. Silvestre L. Martinez mentioned that the LPS was prepared by Societe Generale de Surveillance, an accredited cargo surveying company selected by SL's supplier, Glencore Singapore.[148] Without presenting the person who prepared the LPS, the information and facts contained therein are similarly hearsay, and, as explained, hearsay evidence has no probative value whether objected to or not. More importantly, a person can never be prejudiced by an act or declaration of another. ***Res inter alios acta alteri nocere non debet.***[149]

In addition, this Court cannot give credence to the entirety of Mr. Silvestre L. Martinez's testimony due to its inconsistencies. In his Judicial Affidavit, he testified that he is familiar with M/Tkr. Malolos.[150] However, during his cross-examination, he said that he does not know about the said conveyance.[151] Further, in his Judicial Affidavit,[152] Martinez testified with

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[142] *Republic of the Philippines v. Carmen Santorio Galeno,* G.R. No. 215009, 23 January 2017.
[143] *Ibid.*
[144] *Ibid.*
[145] See Q12-A and A12-A of Judicial Affidavit of Mr. Silvestre L. Martinez, Exhibit R-6, Records, Vol. 3, pp. 1045-1046.
[146] Records, Vol. 15, pp. 6712-6737.
[147] *Heirs of Serapio Mabborang, et al. v. Hermogenes Mabborang and Benjamin Mabborang,* G.R. No. 182805, 22 April 2015.
[148] See *TSN for 6 November 2018 hearing,* pp. 32-34 and p. 41.
[149] *Tamargo vs. Awingan,* G.R. No. 177727, 19 January 2010.
[150] See Q7 and A7 of Judicial Affidavit of Mr. Silvestre L. Martinez, Exhibit R-6, Records, Vol. 3, p. 1045.
[151] See *TSN for 6 November 2018 hearing,* p. 32.
[152] See Q15 and A15 of Judicial Affidavit of Mr. Silvestre L. Martinez, Exhibit R-6, Records, Vol. 3, p. 1046.

certainty based on his Memorandum dated 16 December 2016[153] and Memorandum dated 21 December 2016[154] that industrial fuel oil was discharged at SL's terminal at Limay, Bataan and was subsequently transferred to a barge, M/Tkr. Malolos bound for Navotas, Manila. This testimony was contrary to his statement during his cross examination wherein he insisted that the transfer of industrial fuel was made on a ship-to-ship basis from M/T Alpine Magnolia to M/Tkr. Malolos, *viz:*

> "ATTY. FETIZANAN
>
> xxx xxx xxx
>
> Q: Now, Mr. Witness, you made mention of a Memorandum dated December 16, 2016, can you refer to that?
>
> MR. MARTINEZ
>
> A: Yes, ma'am.
>
> ATTY. FETIZANAN
>
> Q: On the first paragraph of your Memorandum it was clear here that the fuel oil was discharged at SL Limay Terminal, correct?
>
> MR. MARTINEZ
>
> A: Yes, ma'am.
>
> ATTY. FETIZANAN
>
> Q: And then the fuel that was loaded on MT Malolos was from the terminal, is that correct?
>
> MR. MARTINEZ
>
> A: No, ma'am. It is a ship-to-ship transfer from Alpine Magnolia to barge Malolos.
>
> ATTY. FETIZANAN
>
> Q: In your Spot Report this December 21, 2016, on the second paragraph it states here that said vessel referring to MT Malolos believed to have transported its cargo of industrial fuel oil presumably discharged from SL Harbor Bulk Terminal, correct?
>
> MR. MARTINEZ

---

[153] Exhibit R-3, Records, Vol. 3, pp. 1052-1053.
[154] Exhibit R-4, Records, Vol. 3, p. 1054.

A: Yes, ma'am.

ATTY. FETIZANAN

Q: So it's correct, Mr. Witness, that MT Malolos discharged its cargo from the terminal SL Harbor, correct?

ASSOC. SOL. CASTRO

Objection, your Honors, the statements says presumably discharged.

ATTY. FETIZANAN

Your Honor, the counsel is testifying for the witness, your Honor.

ASSOC. SOL. CASTRO

The document says presumably discharged.

JUSTICE UY

Let the witness answer.

MR. MARTINEZ

A: It is written in my report, ma'am, that it is presumably discharged.

ATTY. FETIZANAN

Q: So when you stated there presumably, you are not certain whether it was discharged from the terminal or not, correct, Mr. Witness?

MR. MARTINEZ

A: Yes, ma'am.

ATTY. FETIZANAN

Q: The reason for this is because you have no personal knowledge of the actual discharge of the fuel cargo from the MT Alpine to the terminal, correct?

MR. MARTINEZ

A: Yes, ma'am.

ATTY. FETIZANAN

Q: Or from the terminal also to the MT Malolos, you have no personal knowledge of that?

MR. MARTINEZ

A: Yes, ma'am, because that is not my job.

JUSTICE LIBAN

So in other words, you did not witness any of the transfer?

MR. MARTINEZ

A: Yes, ma'am.

JUSTICE LIBAN

Because during your testimony you were almost sure that the cargo was transferred from SL Harbor to MT Malolos to the barge, but now you are saying that presumably. So, you did not witness any of the transfer?

MR. MARTINEZ

A: Yes, your Honor.

JUSTICE LIBAN

Because that is not your job?

MR. MARTINEZ

A: Yes, ma'am.

JUSTICE LIBAN

Your job is just to, what?

MR. MARTINEZ

A: Ma'am, to gather intelligence reports and information and make reports for the consumption of higher authorities.

JUSTICE LIBAN

So in other words, when you say intelligence report, you gather it from other sources and not from your own ears, eyes?

MR. MARTINEZ

A: Ma'am, it is either from our initiative or from our informants.

JUSTICE LIBAN

But in this case, you did not witness any of the transfer?

MR. MARTINEZ

A: Yes, ma'am.

JUSTICE LIBAN

Because you said presumably?

MR. MARTINEZ

A: Yes."[155]

As detailed above, Mr. Silvestre L. Martinez's testimony during his cross-examination underscores the fact that he did not have personal knowledge of how the fuel and petroleum products were discharged from M/T Alpine Magnolia to M/Tkr. Malolos (*i.e.,* whether it was loop loaded directly from ship-to-ship, or initially unloaded to SL's terminal at Limay, Bataan then loaded from the terminal to the barge). In fact, he admitted during cross-examination that he drafted the Memorandum dated 16 December 2016[156] and Memorandum dated 21 December 2016[157] based on the reports gathered by others and not from his own perception. As such these reports and his direct testimony,[158] which was sourced from such reports, have no probative value as these are also hearsay evidence.

From a thorough examination of the pieces of evidence offered by the parties, it becomes clear that no loop loading of fuel and petroleum products occurred from M/T Alpine Magnolia to M/Tkr. Malolos. This court believes the testimony of Capt. Javier P. Gocotano when he said that they loaded fuel and petroleum products from SL's terminal at Limay, Bataan.[159]

Petitioner had no knowledge of or participation in the alleged fuel smuggling act.

Even if loop loading actually occurred in the case at bar, M/Tkr. Malolos still cannot be forfeited. As stated, ***Section 1114 of the CMTA*** mandates that forfeiture of a conveyance shall not be effected if it is established that the owner or the agent in charge has no knowledge of or

[155] See *TSN for 6 November 2018 hearing.*
[156] Exhibit R-3, Records, Vol. 3, pp. 1052-1053.
[157] Exhibit R-4, Records, Vol. 3, p. 1054.
[158] See Judicial Affidavit of Mr. Silvestre L. Martinez, Exhibit R-6, Records, Vol. 3, pp. 1043-1055; in relation to *TSN for 6 November 2018 hearing,* pp. 27-28.
[159] See Judicial Affidavit of Capt. Javier P. Gocotano, Exhibit P-10, Records, Vol. 1, pp. 358-359.

participation in the unlawful act. The evidence produced by petitioner definitely proved that it had no knowledge of or participation in the alleged loop loading or any other unlawful activity.

As testified upon by Capt. Javier P. Gocotano during his cross-examination, since petitioner was chartered by SL, the former's obligation was merely to receive the latter's cargo and deliver the same to the intended destination. Also, in the usual manner by which they load cargo, he and the other crew members of M/Tkr. Malolos are concerned only with the condition and readiness of the vessel, and the proper receiving and loading of the cargo from the chemical loading arm of the terminal to the vessel's manifolds. They are not concerned with the pipings and source of the cargo, *viz:*

> "JUSTICE VICTORINO
>
> How would you reconcile your answer in questions no. 25 and 26, can you explain to the Court. Confront the witness with his judicial affidavit.
>
> xxx xxx xxx
>
> MR. GOCOTANO
>
> A: The usual manner we load the cargo is just by receiving the cargo through our vessels cargo connection, we are not concerned with any pipes or connections outside of our vessel. Our work is only concerned within our vessel and the connection of the terminals, the chemical loading arm and to the vessels manifold is where our work ends and begins and ends, we are not concerned about the pipings the source of the cargo but we are only concerned in the receiving of the cargo into our vessel.
>
> JUSTICE VICTORINO
>
> Are you telling us that you did not even inquire whether what is loaded in your ship is illegal or not, you just receive whatever it is that you are asked to receive, is that what you are telling the Court?
>
> MR. GOCOTANO
>
> A: Because we are chartered, your Honor.
>
> JUSTICE VICTORINO
>
> So you do not inquire whether what is being loaded in your ship is illegal or not, you just receive it?
>
> MR. GOCOTANO

A: No, I have no knowledge about that because our vessel was only chartered by SL HBTC to deliver load and deliver load from SL Gas Limay Bataan and deliver SL Harbor in Manila.

JUSTICE VICTORINO

So, your obligation was to receive the cargo and deliver the same to the Port in Manila?

MR. GOCOTANO

A: Yes, Your Honors.

JUSTICE VICTORINO

You are telling us that you just received it without any inquiries whether this cargo is illegal or there is something irregular?

MR. GOCOTANO

A: I was not thinking about that because it did not happen before since I came on board the vessel, I have not experienced such activity like that because all we know is the cargo that we loaded are legal.

JUSTICE VICTORINO

What is supposed to be your basis for having that conclusion?

MR. GOCOTANO

A: Because SL HBTC is our charterer and I have been working with the petitioner since 2015 and we were never engaged in such an illegal activity.

xxx xxx xxx

JUSTICE LIBAN

I have a question, you attached several documents and clearances in your affidavit, what are these for, what are these documents and clearances?

MR. GOCOTANO

A: These documents were issued by SL HBTC to be carried by M/T Malolos and to be presented by M/T Malolos to the point of destination or discharging port, these documents certify that a cargo we received is from SL HBTC Limay Bataan and the payments of Philippine Port Authority as shown by the receipts certify that we are carrying the cargo as supported by the documents as legal and not illegal.

JUSTICE LIBAN

What do you mean by payments?

MR. GOCOTANO

A: The port fees.

JUSTICE LIBAN

So, these documents were with you or you saw these documents?

MR. GOCOTANO

A: Yes, Your Honor.

JUSTICE LIBAN

Where did you see it?

MR. GOCOTANO

A: After we received it on board our ship.

JUSTICE VICTORINO

Did you present any documents at the Port of Lamao in Limay Bataan before receiving the cargo?

MR. GOCOTANO

A: No.

JUSTICE VICTORINO

You just received it without notifying the Port that we are here, we are supposed to receive this cargo from the ship, did you not inform the authorities in Port of Lamao in Limay Bataan?

MR. GOCOTANO

A: We are loading the product, Your Honor, based upon the instruction of SL HBTC.

JUSTICE VICTORINO

No, the question is before receiving, upon arrival at the port, did you present any documents to the authorities at Port of Lamao in Limay, Bataan?

MR. GOCOTANO

A: Yes, Your Honor, the notice of readiness.

JUSTICE VICTORINO

What are those documents that you presented?

MR. GOCOTANO

A: We presented the Notice of Readiness certifying that our vessel is ready to receive the cargo nominated by SL Gas Limay Bataan.

JUSTICE VICTORINO

What are the actions taken by the authorities at the Port of Lamao when you presented these documents?

MR. GOCOTANO

A: Your Honors, as usual coming into the Port of Limay Bataan for loading, we just informed the terminal that we have arrived in the area already and ready the ship is in all respect ready to receive the cargo, so that is the usual process that we do before receiving the cargo we just informed the terminal that we have arrived in the area and we are ready to receive the cargo.

JUSTICE VICTORINO

From what ship?

MR. GOCOTANO

A: From M/T Malolos.

JUSTICE VICTORINO

From what ship would be the cargo coming?

MR. GOCOTANO

A: From the terminal.

JUSTICE VICTORINO

It is not from a ship?

MR. GOCOTANO

A: Not from a ship, from the terminal.

JUSTICE VICTORINO

So, the cargo has been unloaded already, it is already where at the time before it was loaded to M/T Malolos?

MR. GOCOTANO

A: I have no idea about that because what we are concerned about our work is within our ship only.

JUSTICE VICTORINO

Yes, but where would the cargo come from?

MR. GOCOTANO

A: From the terminal, after we, that alongside the terminal....

JUSTICE VICTORINO

Where was the terminal located then?

MR. GOCOTANO

A: In the SL Gas Terminal in Limay Bataan, SL HBTC.

JUSTICE VICTORINO

What is that?

MR. GOCOTANO

A: SL Harbor Bulk Terminal Corportion, we did not receive the cargo from any ship, we received the cargo from the terminal.

JUSTICE LIBAN

So, these documents the Notice of Readiness, Notice of Release, Statement of Facts, Withdrawal Certificate, Cargo Certificate Check List..... where did you submit these?

MR. GOCOTANO

A: These were submitted to the office.

JUSTICE LIBAN

Office of what?

MR. GOCOTANO

A: Of the petitioner Herma Shipping and Transport Corporation.

JUSTICE LIBAN

These documents were submitted to the Port's Authority in Limay, what document was submitted there?

MR. GOCOTANO

A: In the Port of Limay, we do not usually submit any document to the Port, we just give our clearances from the port of departure giving it to the Coast Guard that we have arrived and cleared again for departure to deliver the cargo to the port of destination, so these documents that we carry after finishing the loading, we are submitting it to our office and to the receiver of the cargo.

JUSTICE LIBAN

When did you load?

MR. GOCOTANO

A: We loaded the cargo on December 15, 2016.

JUSTICE LIBAN

And did you unload the cargo?

MR. GOCOTANO

A: Yes, Your Honor.

JUSTICE LIBAN

Where?

MR. GOCOTANO

A: In SL Harbor Manila.

JUSTICE LIBAN

And then you went back to Limay Bataan for another loading?

MR. GOCOTANO

A: Yes, Your Honor, that is upon the instructions of SL HBTC which chartered our vessel.

JUSTICE LIBAN

Who will load another, you will do some loading again?

MR. GOCOTANO

A: Yes, Your Honor.

JUSTICE VICTORINO

How many times did you go back to the port of Lamao for the purpose of loading the same cargo?

MR. GOCOTANO

A: We were managed to load only once, Your Honor, because by the second time, we are going to load we were already boarded by the Bureau of Customs personnel.

JUSTICE VICTORINO

You were already?

MR. GOCOTANO

A: Boarded by the Bureau of Customs personnel.

JUSTICE VICTORINO

So the authorities of Port of Lamay boarded M/T Malolos?

MR. GOCOTANO

A: Yes, Your Honor.

JUSTICE VICTORINO

Why?

MR. GOCOTANO

A: Because there was a Warrant of Seizure and Detention issued against M/T Malolos.

JUSTICE VICTORINO

What was the reason for the issuance of the said warrant?

MR. GOCOTANO

A: The Warrant of Seizure and Detention was issued against M/T Malolos for alleged violation of the provisions of the Customs Modernization and Tariff Act particularly for alleged involvement in an alleged fuel smuggling activity.

JUSTICE VICTORINO

Why?

MR. GOCOTANO

A: We do not know, Your Honor, we were just informed that the cargo that we loaded on board our vessel came from another ship but actually what happened is that we loaded our cargo from the terminal.

JUSTICE VICTORINO

Not from another ship?

MR. GOCOTANO

A: Not from another ship.

JUSTICE VICTORINO

So if there was an alleged smuggling that would be there was no payment of proper taxes for the cargo?

MR. GOCOTANO

A: Yes, Your Honors, but it was only alleged because we were not aware of what is going on outside our vessel.

JUSTICE VICTORINO

Because your obligation is merely to receive cargo and deliver the same to a port in Manila?

MR. GOCOTANO

A: Yes, Your Honor." [160]

As shown by the above cited testimony made during cross-examination, petitioner was merely obligated to maintain its vessel, properly load SL's fuel and petroleum products, and transport and discharge the same to SL's intended destination. Its work begins and ends within the ship. It does not concern itself with the source of the cargo loaded by SL. It merely follows

[160] See *TSN for 23 May 2017 hearing,* Records, Vol. 3, p. 1119.

SL's instruction pursuant to the charter. As such, petitioner neither had a chance to obtain any knowledge of any unlawful activity performed by SL to reduce the amount of customs duties and taxes which are due from its fuel and petroleum products, nor had the ability to participate in the same. Consequently, M/Tkr. Malolos is exempt from forfeiture.

The WSD and the Decision dated 20 January 2017 are void for failure to comply with BOC procedure.

Sections 1111, 1116, 1117 and 1119 of the CMTA provide that the person authorized to issue a WSD is the District Collector of the BOC. Further, before a WSD is issued based on an existence of probable cause, a prior recommendation from an alerting officer is required. Also, before an alerting officer can give a recommendation, an alert order has to be issued. Said provisions hold out as follows:

> Section 1111.Alert Orders. —
>
> **Alert orders are written orders issued by customs officers as authorized by the Commissioner on the basis of derogatory information regarding possible non-compliance with this Act. An alert order will result in the suspension of the processing of the goods declaration and the conduct of physical or non-intrusive inspection of the goods** within forty-eight (48) hours from issuance of the order. Within forty-eight (48) hours or, in the case of perishable goods, within twenty-four (24) hours from inspection, **the alerting officer shall recommend the continuance of processing of goods in case of a negative finding, or issuance of a warrant of seizure and detention if a discrepancy between the declaration and actual goods is found.** The Bureau's information system shall immediately reflect the imposition or lifting of an alert order.
>
> Derogatory information shall indicate the violations and other necessary specifics thereof. For this purpose, the following shall not be considered derogatory information:
>
> (a) General allegations of misclassification without providing the appropriate tariff heading and duty of the shipment to be alerted;
> (b) General allegations of misclassification without providing the appropriate tariff heading and duty of the shipment to be alerted;
> (c) General allegations of over-quantity without indicating the source of information supporting the allegation;
> (d) General allegations of misdeclaration in the entry without indicating the suspected actual contents thereof; and

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

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

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

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

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

The Bureau shall create a central clearing house for alert orders and shall submit reports quarterly on the status thereof.

(Emphasis, Ours)

Section 1116. Seizure or Release of Goods. –

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

Section 1117. Warrant of Seizure or Order of Release. –

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

Section 1119. Service of Warrant of Seizure. –

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

(Emphasis, Ours)

Here, the WSD issued against petitioner does not bear the signature of the DCC. This was admitted by respondent's witness, Mr. Silvestre L. Martinez, *viz:*

> "Q11: There seems to be a signature on top of the name Julius B. Premediles in the WSD, whose signature is that Mr. Witness?
>
> A11: Sir, as far as I know that is the signature of Deputy Collector for Operations Dr. Zaldy Almoradie.
>
> Q 12: Mr. Witness, why is the WSD dated December 17, 2016 signed by Deputy Collector for Operations Dr. Zaldy Almoradie?
>
> A 12: Sir, as far as I know, District Collector Julius B. Premediles is in the Port of Manila requesting for the issuance of an Alert Order for MT Alpine Magnolia and its Cargo." [161]

As clearly outlined above, under ***Section 1116 and 1117 of the CMTA,*** it is the District Collector of the BOC which is authorized to issue WSDs. As respondent admitted through the testimony of Mr. Silvestre L. Martinez that the WSD issued against petitioner was signed by a mere Deputy Collector for Operations, the said WSD is invalid.

What is more, the WSD against petitioner while based on a recommendation by a BOC officer, Mr. Silvestre L. Martinez,[162] was issued without a prior alert order. This was also admitted by the DCC during the 25 April 2017 hearing, *to wit:*

> "ATTY. LOYOLA:

[161] See Judicial Affidavit of Mr. Silvestre L. Martinez, Exhibit R-6, Records, Vol. 3, p. 1045.
[162] See Exhibit R-3, Records, Vol. 3, p. 1052.

Q: In Question 20 in page 6 of your Judicial Affidavit, the question was, what came of Agent Martinez recommendation in the 15 December 2016 Memorandum that an Alert Order be issued over the MT Alpine Magnolia in its cargo be issued? My question Mr. Collector, did you ever issue an Alert Order for the subject shipment?

MR. PREMEDILES:

A: Sir, I received the report, I read the report and I recommend to the Honorable Commissioner to issue the Alert Order because it is the Honorable Commissioner who is authorized to issue an Alert Order.

ATTY. LOYOLA:

Q: So, are you saying Mr. Collector that your office, the District Collection Office of the Bureau of Customs is not authorized to issue an Alert Order?

MR. PREMEDILES:

A: Authorized to recommend the Alert Order sir.

ATTY. LOYOLA:

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

MR. PREMEDILES:

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

xxx xxx xxx

JUSTICE DEL ROSARIO:

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

MR. PREMEDILES:

A: **The Alert Order was issued** (interrupted)

ATTY. LOYOLA:

Q: Just say yes or no.

JUSTICE DEL ROSARIO:

Q: Was there an Alert Order issued or none?

MR. PREMEDILES:

A: **There was but late Sir, the over act was already done so I don't need the Alert Order because there was already a probable cause."** [163]

(Emphasis, Ours)

With no such prior alert order issued, contrary to the mandate of ***Sections 1111, 1116 and 1117 of the CMTA,*** the WSD is clearly invalid.

Moreover, petitioner was deprived of due process during the forfeiture proceedings before the DCC guaranteed under ***Section 1119 of the CMTA.***

While the DCC confirmed that the forfeiture proceedings were conducted in the BOC National Office, and that he was present during all of the proceedings,[164] it is noteworthy that when he issued the Decision dated 20 January 2017, he was not aware that another hearing date was scheduled for 1 February 2017 by the hearing officer, Atty. Valdez for the reception of evidence of herein petitioner and SL.[165] He insisted that he already verbally advised Atty. Valdez that there was no longer a need for other hearings after the 10 January 2017 hearing because he already had a Decision, and that in this conversation, Atty. Valdez failed to mention to him the setting of the 1 February 2017 hearing,[166] and that Atty. Valdez simply replied that "at the end of the day, you will the one to decide. I'm just assisting you, kayo po bahala kasi nandun naman po kayo during the hearing."[167]

Further, the Consolidated Disposition Form approved by respondent on 21 June 2017, which showed his affirmation of the Decision dated 20 January 2017 after the filing of the instant Petition for Review, notes that the TSN for the hearings held on 05 January 2017, 10 January 2017 and 27 January 2017 involved merely the reception of evidence and pleadings on the motions filed, and not on the main seizure cases; and that even the hearing officer and government prosecutor affirmed that the issue at hand during the said hearings pertain only to the motions filed and not the main seizure case.[168]

Section 1125 of the CMTA provides:

"Section 1125. Decision in Forfeiture Cases. —

[163] See Exhibit P-45, Records, Vol. 2, pp. 927-929.
[164] *Id.*, pp. 940-941.
[165] *Id.*, p. 955.
[166] *Id.*, Vol. 2, p. 956.
[167] *Id.*, pp. 955-956.
[168] See BOC Records, Consolidated Disposition Form, p. 8.

> In forfeiture cases, the District Collector shall issue an order for hearing within fifteen (15) days, or five (5) days in case of perishable goods, from issuance of the warrant. **The District Collector shall render a decision within thirty (30) days *upon termination of the hearing,* or within ten (10) days in case of perishable goods.** The decision shall include a declaration of forfeiture, the imposition of a fine or such other action as may be proper."
>
> (Emphasis and Italics, Ours)

This provision requires that a District Collector of the BOC render a decision only upon termination of the hearing. Considering that the DCC admitted that he only verbally informed the hearing officer that there was no more need for additional hearing dates as he had already formulated a Decision; and since respondent, through the approval of the Consolidation Disposition Form, recognized that the hearings undertaken were merely for the resolution of the motions filed and did not dispose of the main case, it can be said that there was no proper termination of the forfeiture proceedings when the DCC issued the Decision dated 20 January 2017. Hence, the right to due process guaranteed to petitioner under ***Section 1119 of the CMTA*** has been violated resulting in the nullity of the Decision dated 20 January 2017.

It being shown that the WSD against petitioner was issued not only by an unauthorized officer but also without a required prior alert order, and that the Decision dated 20 January 2017 has been issued without a formal termination of the forfeiture proceedings, the same are clearly invalid. Hence, the forfeiture of M/Tkr. Malolos has no basis.

To summarize, 1) there being no proof that petitioner had knowledge of any smuggling activity or violation of the ***CMTA,*** 2) the alleged smuggling event via loop loading not having been duly proved, 3) the WSD having been issued without complying with BOC procedure, and 4) with petitioner having been deprived of due process before the forfeiture proceedings, there is no other recourse but to grant the instant Petition.

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. The Warrant of Seizure and Detention dated 17 December 2016 against M/Tkr. Malolos, and the Decision dated 20 January 2017 by the District Collector of Customs, which was deemed affirmed by respondent, Commissioner of the Bureau of Customs, and ordered the forfeiture of M/Tkr. Malolos, are hereby **REVERSED AND SET ASIDE.** Accordingly, the Resolution dated 11 July 2018, which ordered the release of M/Tkr. Malolos upon posting of a surety bond is DECLARED PERMANENT. The surety bond posted by petitioner in the amount of twenty four million eight hundred ninety seven thousand pesos (Php24,897,000.00) in accordance with the Resolution dated 23 May 2019 is ORDERED RELEASED AND DISCHARGED UPON FINALITY OF JUDGMENT.

The Notice of Change of Firm Name is hereby NOTED.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, 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