

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CUSTOMS,
Petitioner,

CTA EB No. 2556
(CTA Case No. 9561)

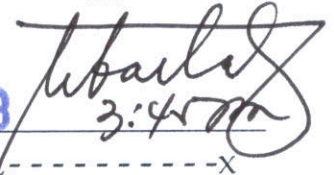
Present:

- versus -

DEL ROSARIO, PJ,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID,
FERRER-FLORES, JJ.

HERMA SHIPPING AND
TRANSPORT CORPORATION,
Respondent.

Promulgated:
SEP 21 2023


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DECISION

REYES-FAJARDO, L.:

Before the Court *En Banc* is a Petition for Review¹ filed by the Commissioner of Customs (petitioner or COC) on December 17, 2021 assailing the Decision² promulgated on July 17, 2020 and Resolution³ promulgated on September 29, 2021 rendered by the Third Division of this Court (Court in Division) in CTA Case No. 9561. The respective dispositions of the assailed Decision and Resolution read as follows:

¹ Rollo, pp. 1-42

² Penned by Associate Justice Maria Rowena Modesto-San Pedro with Associate Justices Erlinda P. Uy and Ma. Belen M. Ringpis-Liban concurring. Rollo, pp. 44-88.

³ Rollo, pp. 89-92.



Assailed Decision

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.

Assailed Resolution

WHEREFORE, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

FACTS

Petitioner COC is charged with interpreting the provisions of the Customs Modernization and Tariff Act (CMTA) and head of the Bureau of Customs (BOC), a government agency tasked with the assessment and collection of customs duties and other lawful revenues from imported articles with office address at the G/F, OCOM Bldg., Port Area, Manila. It has exclusive jurisdiction over forfeiture cases under the CMTA.

Respondent Herma Shipping and Transport Corporation (HSTC) is a domestic corporation engaged in the business of hauling, shipping, and/or transporting within Philippine waters, oil and petroleum products of its customers.⁴

HSTC is the owner of the barge named M/Tkr. Malolos⁵ and is permitted to operate the same pursuant to a Certificate of Public Convenience in its name, in its business of hauling petroleum products to any point in the Philippines.

The present controversy stems from petitioner COC's forfeiture of M/Tkr. Malolos due to HSTC's alleged involvement in fuel smuggling. The antecedents leading to the forfeiture as narrated by the Court in Division follow:

x x x SL Harbor Bulk Terminal Corporation ("SL") and [HSTC] 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, which includes the route Limay, Bataan to Navotas, Manila.

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. The actual loading of the cargo occurred between 18:40 to 20:30 of 15 December 2016 pursuant to SL's instructions with the cargo emanating from SL's terminal in Limay, Bataan.

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.

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 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.

⁴ Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket (CTA Case No. 9561) – Vol. 8, p. 3700.

⁵ Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket (CTA Case No. 9561) – Vol. 8, p. 3700.

97

Meanwhile, the Warrant of Seizure and Detention (WSD)⁶ read:

WARRANT OF SEIZURE AND DETENTION

To: Deputy Collector for Operations, SSPDC Personnel, etc.
District Port of Limay

GREETINGS:

WHEREAS, the above-described barge/vessel be seized for having violated Section 1113, paragraphs (a), (e), (k), and (l) subparagraph (1) of R.A. 10863 otherwise known as the Customs Modernization and Tariff Act and other BOC laws, rules and regulations after determination of the existence of probable cause by the herein District Collector of Customs upon recommendation by Custom Intelligence and Investigation Service, SSPDC personnel and other Customs Officers of this District.

WHEREAS, the said barge/vessel is at present allegedly in navigational waters of Region III, Central Luzon under the jurisdiction of this Collection District XVI.

WHEREAS, by virtue of authority vested in me by law and in compliance with pertinent customs laws, rules and regulations, you are hereby ordered to forthwith seize the aforementioned vessel and turn over the same to the custody of the Auction and Cargo Disposal Division of this Port to be assisted by Limay Maritime Police and Philippine Coast Guard, to observe strict compliance with Customs Memorandum Order No. 8-84, particularly on the matter of making a return of service and the submission of the inventory report or quantity of the cargoes loaded therein or any particulars thereof and finally to return the aforesaid WSD to this District Port within ten (10) days from date of service.

SO ORDERED.

District Port of Limay Bataan, Philippines, this 17th day of December 2016.

[signed]
JULIUS B. PREMEDILES
District Collector of Customs

⁶ Docket (CTA Case No. 9561) – Vol. 15, p. 6718.

The Court in Division's narration continued:

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.

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

After petitioner filed its Formal Offer of Evidence 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.

In its Decision, the DCC narrated that M/T Alpine Magnolia arrived in Limay Bataan from Port Kelang, Malaysia on December 14, 2016 for the purpose of discharging fuel consigned to SL. Subsequently, it was found that M/T Alpine's fuel cargo was tainted with fraud due to inconsistencies in its documentation.

On February 7, 2017, HSTC appealed the forfeiture before the DCC. However, petitioner COC did not resolve the appeal within the thirty (30)-day period mandated by Section 1126 of the CMTA. This prompted HSTC to proceed to the Court of Tax Appeals on March 31, 2017 *via* petition for review.

Proceedings Before the Court in Division

After the Court's issuance of Summons⁷ to the COC, HSTC moved for the urgent release of M/Tkr. Malolos (Motion to Release),⁸ claiming that it has suffered tremendous damage and prejudice by virtue of the unlawful seizure, detention, and forfeiture of its barge.⁹ HSTC denied knowledge of and participation in the alleged fuel smuggling activity.¹⁰ According to HSTC, M/Tkr. Malolos, a common carrier, may not be the subject of seizure, detention, and forfeiture.¹¹

⁷ Docket (CTA Case No. 9561) - Vol. 1, p. 292.

⁸ Docket (CTA Case No. 9561) - Vol. 1, pp. 293-309.

⁹ Docket (CTA Case No. 9561) - Vol. 1, p. 305.

¹⁰ Docket (CTA Case No. 9561) - Vol. 1, p. 300.

¹¹ Docket (CTA Case No. 9561) - Vol. 1, p. 294.

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On August 31, 2017, the Court in Division denied¹² HSTC's motion for its failure to prove the existence of serious and irreparable damage and injury caused by the continued seizure and detention of the barge to its business operations. Further, the issues of whether the common carriers may be the subject of seizure or forfeiture and whether HSTC was involved in fuel smuggling go into the merits of the case and will be more properly resolved during trial.

However, upon HSTC's motion,¹³ the Court in Division reconsidered¹⁴ the Resolution dated August 31, 2017, after finding that the continued detention of M/Tkr. Malolos had adverse financial effects to HSTC. Subsequently, after HSTC posted the required surety bond,¹⁵ the Court ordered¹⁶ the release of M/Tkr. Malolos.

The Court in Division admitted all evidence formally offered by HSTC relative to the Motion to Release and Motion for Reconsideration (of the Resolution dated August 31, 2017) for purposes of deciding the main case, subject to final appreciation of the same. Likewise, it resolved¹⁷ to admit the evidence formally offered by the COC, subject to the Court's final evaluation and appreciation of its purposes, materiality, relevancy and probative value to the issues involved in the case.

Meanwhile, on March 19, 2019, HSTC 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)¹⁸ on the ground that M/Tkr. Malolos has severely depleted in value as a result of its detention. The Court in Division granted¹⁹ the Omnibus Motion and reduced the surety bond amount to P24,897,000.00.

¹² Docket (CTA Case No. 9561) – Vol. 3, pp.1033-1042.

¹³ Docket (CTA Case No. 9561) – Vol. 3, pp. 1083-1175.

¹⁴ In a Resolution dated July 11, 2018. Docket (CTA Case No. 9561) – Vol. 14, pp. 6537-6553.

¹⁵ In the amount of ₱58,932,000.00.

¹⁶ In a Resolution dated August 2, 2018. Docket (CTA Case No. 9561) – Vol. 15, pp. 6624-6626.

¹⁷ In a Resolution dated November 6, 2018. Docket (CTA Case No. 9561) – Vol. 15, pp. 6745-6746.

¹⁸ Docket (CTA Case No. 9561) – Vol. 15, pp. 6747-6751.

¹⁹ In a Resolution dated May 23, 2019. Docket (CTA Case No. 9561) – Vol. 15, pp. 6867-6872.

Decision of the Court in Division

In the Assailed Decision, the Court in Division ruled in HSTC's favor. It explained as follows:

First, HSTC has legal capacity and *locus standi* to institute the petition for review before the Court in Division. HSTC is a juridical person that stands to be benefited or injured by a judgment on the detention of M/Tkr. Malolos. As the owner and operator of M/Tkr. Malolos, HSTC has personal, substantial, and material interest in the action, taken that it already sustained direct injury on account of the barge's detention and will further suffer should the validity of the WSD is sustained.

Second, M/Tkr. Malolos, a common carrier, is exempt from seizure under Sections 1113 and 1114 of the CMTA. More particularly, the subject barge is exempted under Section 1114 because the COC failed to point to any circumstance that would give rise to a *prima facie* presumption that HSTC has knowledge or participation in the unlawful act for which the vehicle or means of conveyance was used.

Third, to be sure, there was no fuel smuggling *via* loop loading that occurred. And, assuming that there had been such an activity, HSTC had no knowledge or participation in the same. The testimonies of the COC's witnesses reveal that none of them had 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). On the other hand, Capt. Javier P. Gocotano, HSTC's ship captain, testified that he never saw any ship or ships come near M/Tkr. Malolos prior to December 20, 2016. They merely loaded fuel and petroleum products from SL's terminal at Limay, Bataan.

Notably, Lorecel R. Ibanez, Chief of Staff, DCC, Limay, Bataan, on cross-examination, even admitted that some of the fuel and petroleum products were in fact discharged at SL's tanks located in its terminal at Limay, Bataan. This contradicts the theory that the fuel and petroleum products were in fact loop loaded from M/T Alpine Magnolia to M/Tkr. Malolos.

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Fourth, even assuming that there had been loop loading, it was not shown that HSTC had personal knowledge of or participation in the alleged fuel smuggling act. Thus, M/Tkr. Malolos still cannot be forfeited pursuant to the mandate under Section 1114 of the CMTA — 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 participation in the unlawful act.

Fifth, the WSD and the Decision dated January 20, 2017 (*i.e.*, denial of motion to lift WSD and order for forfeiture) are void on account of non-compliance with BOC procedure. Under the CMTA, a WSD shall issue only upon the authority of the DCC and upon the issuance of an alert order, as well as a prior recommendation of an alerting officer. However, in the present case, the subject WSD was issued only by a mere Deputy Collector and without a prior alert order and recommendation.

In addition, Section 1125 of the CMTA requires the DCC to render a decision only upon termination of the hearing. Here, the DCC admitted that there was only a verbal notification to the hearing officer that there was no more need for additional hearing dates as he [DCC] already drafted a decision. The lack of proper termination of the forfeiture proceedings resulted in a violation of HSTC's right to due process.

The Court in Division also denied²⁰ the COC's subsequent Motion for Reconsideration.

Hence, the COC filed the present petition.

The COC's Arguments

Petitioner COC seeks to have the Assailed Decision and Resolution set aside and, in effect, its forfeiture of M/Tkr. Malolos be validated and upheld based on the following grounds:²¹

²⁰ In a Resolution dated September 29, 2021.

²¹ *Rollo*, p. 16.

97

I

RESPONDENT HAS NO LEGAL PERSONALITY TO SUE ON BEHALF OF A VESSEL THAT WAS FORFEITED DUE TO SMUGGLING.

II

M/T MALOLOS WAS CORRECTLY SEIZED AND FORFEITED, IN ACCORDANCE WITH LAW AND JURISPRUDENCE.

III

THE WSD WAS VALIDLY ISSUED BY THE BOC OFFICIALS IN THE REGULAR PERFORMANCE OF THEIR OFFICIAL DUTIES AND IN ACCORDANCE WITH THE LAWS AND RULES.

IV

RESPONDENT CAN NO LONGER DISMANTLE THE VESSEL M/T MALOLOS BECAUSE THIS FORFEITURE/SEIZURE PROCEEDING TERMINATES THE OWNERSHIP RIGHTS OF RESPONDENT OVER SAID VESSEL.

V

RESPONDENT HAS NO BASIS IN FACT AND IN LAW IN REDUCING THE REDUCTION OF (SIC) SURETY BOND IT ORIGINALLY POSTED.

HSTC's Arguments

In its Comment/Opposition²² filed on August 19, 2022, respondent HSTC counters as follows:

A.

CONTRARY TO PETITIONER'S CONTENTION, RESPONDENT HSTC, BEING THE OWNER OF THE M/T MALOLOS VESSEL, HAS THE LEGAL CAPACITY TO FILE A PETITION FOR REVIEW BEFORE THE DIVISION OF THE HONORABLE CTA.

²² Rollo, pp. 442-474.

B.

CONTRARY TO THE CLAIM OF THE PETITIONER, THE REDUCTION OF THE SURETY BOND IS PROPER, AND IS NOT PREJUDICIAL TO THE GOVERNMENT.

C.

THERE WAS NO FUEL SMUGGLING THAT OCCURRED INVOLVING M/T MALOLOS VESSEL.

D.

THE WARRANT OF SEIZURE AND DETENTION, AND THE DECISION DATED 2[0] JANUARY 2017 OF THE DISTRICT COLLECTOR ARE VOID FOR FAILING TO COMPLY WITH THE PROCEDURAL RULES.

ISSUES

Having regard to the arguments raised by the parties, We restate the issues as follows: *First*, was HSTC the proper party to appeal M/Tkr. Malolos' seizure and forfeiture before the CTA? *Second*, did the COC/BOC comply with its own procedures in forfeiture proceedings? *Third*, was the forfeiture of M/Tkr. Malolos justified? *Fourth*, did the COC establish that actual loop loading took place?

RULING

The Petition for Review is denied for lack of merit.

For reasons set out below, We uphold the Court in Division's ruling, *viz.*: *First*, as the owner and operator of M/Tkr. Malolos, HSTC had a right to appeal the forfeiture of barge. *Second*, there had been failure to comply with administrative procedures relative to forfeiture proceedings. *Third*, the forfeiture of M/Tkr. Malolos was barred by Section 1114 of the CMTA. *Fourth*, in any case, that actual loop loading took place was not sufficiently established.

Resolving the first and second issues in the present case turns upon this Court's interpretation of procedural rules governing seizure

and forfeiture proceedings. Thus, in the succeeding discussions, We have referenced the relevant provisions of the CMTA, as well as those contained in Customs Administrative Order (CAO) No. 10-2020,²³ which were promulgated to implement the seizure and forfeiture provisions in the CMTA.

We are mindful that the procedural incidents²⁴ in this controversy occurred after the CMTA took effect in 2016, but prior to the issuance of CAO No. 10-2020. In this regard, We are guided by the principle that implementing rules promulgated by an administrative agency constitute **contemporaneous interpretations** of the relevant law; these deserve great weight.²⁵ To be sure, the relevant portions We have cited in CAO No. 10-2020 do not impair any of HSTC's vested rights.²⁶ While promulgated already during the pendency of its appeal, the provisions of CAO No. 10-2020 lend clarity to the procedural rules in forfeiture proceedings and, to Our mind, only serve to fortify HSTC's right to due process.

*As the owner and operator of
M/Tkr. Malolos, HSTC had a right
to appeal the forfeiture of barge.*

The COC claims that HSTC is bereft of legal capacity to sue considering that a forfeiture proceeding is directed against the vessel itself as the offender. Put in another way, it theorizes that HSTC did not have the right to appeal the forfeiture to the CTA.

We disagree with this position.

The rule is that a right of action, including an appeal, belongs exclusively to the **real party in interest**. In this regard, the Supreme Court, in *Philippine Numismatic and Antiquarian Society v. Aquino*,²⁷ has enunciated:

²³ Subject: Seizure and Forfeiture Proceedings and Appeals Process. Issued to implement Sections 1113 to 1117, Sections 1119 to 1125, Chapter 4, and Sections 1126 to 1128, Chapter 5 of Title XI and other relevant provisions of the CMTA.

²⁴ The WSD and the DCC's Decision denying the motion to lift said WSD were served/issued on December 20, 2016 and January 20, 2017, respectively. Thereafter, HSTC appealed the forfeiture before the DCC on February 7, 2017.

²⁵ *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. No. 247918, February 1, 2023.

²⁶ *Sumiran v. Spouses Damaso*, G.R. No. 162518, August 19, 2009.

²⁷ G.R. No. 206617, January 30, 2017, 804 PHIL 508-523.

There is no question that a litigation should be disallowed immediately if it involves a person without any interest at stake, for it would be futile and meaningless to still proceed and render a judgment where there is no actual controversy to be thereby determined. Courts of law in our judicial system are not allowed to delve on academic issues or to render advisory opinions. They only resolve actual controversies involving rights that are legally demandable and enforceable.

The Rules of Court, specifically Section 2 of Rule 3 thereof, requires that unless otherwise authorized by law or the Rules of Court, every action must be prosecuted or defended in the name of the real party-in-interest, thus:

Sec. 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.

This provision has two requirements: (1) to institute an action, the plaintiff must be the real party-in-interest; and (2) the action must be prosecuted in the name of the real party-in-interest. **Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case**, as distinguished from mere curiosity about the question involved. One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. (Emphasis supplied)

As the owner and operator of M/Tkr. Malolos, it cannot be denied that HSTC stood to be injured by the forfeiture of the subject barge. When M/Tkr. Malolos was forfeited in favor of the government, HSTC was prevented from generating revenues from the barge's prospective voyages and defraying the costs of its overall operations. As such, certainly, it has some legal recourse to recover the property and its property interest.

However, the COC disregards HSTC's proprietary rights. It argues that regardless of the injury HSTC will sustain, it is M/Tkr. Malolos that committed a revenue violation and, as a consequence thereof, the law requires forfeiture without due regard to its owner. According to the COC, in cases of smuggling and other misconduct under the revenue laws, the forfeiture proceeding initiated is one that is directed against the vessel and not its owner;²⁸ it is in the nature of a

²⁸ Rollo, p. 17.

proceeding *in rem*, where the property itself is the offender, regardless of who the owner is.²⁹

The COC's narrow and literal interpretation of law and jurisprudence makes much about an inanimate object being the offender, as if no natural or juridical person may claim the forfeited property or defend their claim. Certainly, this could not have been the intent of the law; especially having regard to the constitutional mandate protecting every person against deprivation of property without due process of law.³⁰ If its property is forfeited, the owner could not be left without recourse.

In this regard, the CMTA expressly affords an **aggrieved party** the right to appeal a forfeiture, *viz*:

SECTION 102. Definition of Terms. — As used in this Act:

x x x

(e) Appeal refers to the **remedy by which a person who is aggrieved or adversely affected by any action, decision, order, or omission of the Bureau**, seeks redress before the Bureau, the Secretary of Finance, or competent court, as the case may be x x x

SECTION 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.

²⁹ *Rollo*, p. 19.

³⁰ Section 1, Article III, 1987 Constitution.

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In turn, CAO No. 10-2020,³¹ issued to implement the CMTA identifies as the aggrieved party the importer, exporter, or any stakeholder in the controversy, *viz.*:

Section 16. Appeal to the Commissioner.

- 16.1 The aggrieved importer or exporter or any stakeholder directly affected by the adverse Decision of the District Collector may appeal the Decision by filing a Notice of Appeal with a corresponding Memorandum on Appeal within fifteen (15) days or five (5) days in case of Perishable Goods, from receipt thereof.

In case of an adverse ruling on the administrative level, the CMTA recognizes the right of such aggrieved party to lodge an appeal before the CTA, *viz.*:

SECTION 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. (Emphasis supplied)

Republic Act (RA) No. 1125³² is consistent with the CMTA as to the aggrieved party's right to appeal, *viz.*:

SECTION 11. Who may appeal; effect of appeal. — **Any person association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals** may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling. (Emphasis Supplied)

Based on the foregoing, We underscore the following: *First*, the COC's decision to forfeit the vessel was clearly adverse to the interest of HSTC, as the owner and operator of M/Tkr. Malolos. Its ownership rights over the barge makes HSTC the real party in interest in the present case. *Second*, as an aggrieved party or person adversely affected by the COC's ruling, HSTC had the right to appeal the forfeiture to the CTA.

³¹ Subject: Seizure and Forfeiture Proceedings and Appeals Process. Issued to implement Sections 1113 to 1117, Sections 1119 to 1125, Chapter 4, and Sections 1126 to 1128, Chapter 5 of Title XI and other relevant provisions of the CMTA.

³² An Act Creating the Court of Tax Appeals, Republic Act No. 1125, June 16, 1954.

QW

We cannot deny HSTC the aforementioned remedial measures. Otherwise, We would be sanctioning the violation of its fundamental right to due process.

There had been failure to comply with procedures relative to forfeiture proceedings.

a) WSD is void for being issued without authority

The CMTA provides as follows:

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 x x x

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 x x x (Emphasis supplied)

CAO No. 10-2020 defines the **District Collector's authority to issue the WSD as exclusive**, viz:

Section 6. Issuance & Service of Warrant of Seizure and Detention.

- 6.1. Authority to Issue a Warrant of Seizure and Detention. **The District Collector** exercising territorial jurisdiction over the location of the seized goods shall have the **original and exclusive authority to issue the WSD** x x x
- 6.5. Service of Warrant of Seizure and Detention. **The District Collector shall immediately direct the Enforcement and Security Service to serve the WSD** within three (3) working days from its issuance x x x (Emphasis supplied)

However, as already observed by the Court in Division, the WSD issued against HSTC had been signed by the Deputy Collector for Operations, not by the DCC, to wit:

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.

Q12: Mr. Witness, why is the WSD dated December 17, 2016 signed by Deputy Collector for Operations Dr. Zaldy Almoradie?

A12: 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."

While the presumption of regularity is ordinarily available in favor of public officers, this has been controverted by clear and convincing evidence³³ that the WSD was issued without proper authority. Plainly, only the DCC is authorized to issue a WSD. That the subject WSD was issued by someone else (*i.e.*, Deputy Collector of Operations), this unauthorized issuance renders the WSD defective and ineffectual.

b) The COC did not observe proper procedure in rendering a decision.

Under the CMTA, the conduct of a hearing must be completed first before the DCC may render a decision on the forfeiture case, *viz.*:

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

³³ See *Bustillos v. People*, G.R. No. 160718, May 12, 2010, 634 Phil. 547-556 (2010).

CAO No. 10-2020 further requires the filing of the claimant's position paper and the government prosecutor's comment thereto before the case is submitted for the DCC's resolution, *viz.*:

Section 12. Hearing Proper.

- 12.1. The Hearing Officer shall immediately set the hearing of the forfeiture case upon receipt of the case folder or the copy of the WSD. Clarificatory hearing/s may be conducted by the Hearing Officer as may be deemed necessary.
- 12.2. After termination of the hearing, the Hearing Officers shall require the claimant to submit its verified **Position Paper**, within five (5) days from date of last hearing, copy furnished the Government Prosecutor.
- 12.3. Within five (5) days from receipt of the Position Paper, the Government Prosecutor shall file its **Comment**, copy furnished the claimant. The claimant may file a verified Reply within three (3) days from receipt thereof, copy furnished the Government Prosecutor. **After submission of the last pleading[,] the case will be submitted for resolution.**
- 12.4. **The District Collector shall render a Decision within thirty (3) days or ten (10) days in case of Perishable Goods, upon the submission of the case for resolution.** (Emphasis supplied)

Obviously, the hearing and filing of pleadings requirements **prior** to the DCC's resolution of the forfeiture case accords administrative due process: to allow the parties involved ample opportunity to submit evidence, summarize its position after the hearings, and comment on any issue that may have arising in the course thereof.

We underscore that these rules are set out in the very law and regulation the BOC is tasked to enforce.³⁴ Thus, **while technical rules of procedure are not strictly applied in administrative proceedings, the COC/BOC cannot simply dispense with its own rules, especially if non-compliance thereof may impair a litigant's opportunity to be heard.**

In the present case, We observe the following: *First*, the DCC issued the Decision dated January 20, 2017 even though there was

³⁴ See Section 202(k), CMTA.

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another hearing set on February 1, 2017. *Second*, as the hearings were not yet terminated, the parties were not directed to file the required pleadings (e.g., position paper, comment, etc.).

The COC does not deny that it did not further conduct hearings, but argues that these were merely additional³⁵ to those already held prior to the DCC's ruling. Further, verily, HSTC filed a Position Paper. However, this had been in relation to its motion to lift the WSD, which is separate and distinct from the position paper referred to in Section 12.2 of CAO No. 10-2020.

The foregoing establishes that the DCC ruled on the forfeiture case even though the hearings were not yet terminated and without the parties' pleadings. In other words, the COC/BOC did not comply with its own rules of procedure.

The forfeiture of M/Tkr. Malolos was barred by Section 1114 of the CMTA.

M/Tkr. Malolos' forfeiture was grounded on four (4) separate paragraphs under Section 1113 of the CMTA, viz.:

CHAPTER 4 *Seizure and Forfeiture*

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 x x x

(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 x x x

³⁵ Rollo, p. 37.

(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 x x x

(l) Goods sought to be imported or exported:

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

However, the CMTA also forecloses any forfeiture under Section 1114, viz.:

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.

A careful reading of the above-cited provisions leads Us to the conclusion that the forfeiture of M/Tkr. Malolos was not justified.

Section 1114 prohibits the forfeiture of any property under Section 1113 if it is *proven* that the *owner* of the vehicle, vessel, or aircraft or the *agent* in charge of the means of conveyance has *no knowledge of or participation in the unlawful act*. To be sure, Section 1114 operates as a general exemption from the application of Section 1113.

In the present case, Capt. Javier P. Gocotano testified as follows: *First*, M/Tkr. Malolos was chartered by SL. As such, its obligation was merely to receive SL's cargo and deliver the same to the intended destination. *Second*, together with the other crew members of the barge, he is concerned only with the maintenance of the 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 SL's instruction pursuant to the charter.

We agree with the Court in Division in giving probative value to this testimony, inasmuch as the COC has not presented proof to refute the captain's statements. As the agent in charge of the barge had no knowledge of the loop loading, M/Tkr. Malolos is exempted from forfeiture under *any ground under Section 1113* pursuant to Section 1114.

There was no sufficient proof that loop loading took place.

The unlawful act complained of (i.e., loop loading) involving M/Tkr Malolos was described by the DCC as follows:

On 16 December 2016, while still in Manila, the District Collector of Limay received a report from the Deputy Collector for Operations Almoradie that as of 2030H or 8:30 o' clock in the evening of 15 December 2016, a total volume of 962,000.003 liters of fuel oil was loaded to MT Malolos bound for Navotas per Cargo Outrun Certificate issued and approved by Terminal Depot Manager for SL Limay Terminal, Mr. EV Estnisalo (sic). The Cargo Outrun Certificate dated 15 December 2016 indicated "MT Alpine Magnolia v. 060 (Loop Loading)" as the source tank of MT Malolos vessel.³⁶

Loop loading was alleged to have taken place in the present case when the fuel and petroleum products carried by M/T Alpine Magnolia was unloaded directly to M/Tkr. Malolos, when the two vessels were side by side. However, it was established that the fuel and petroleum products were first unloaded by M/T Alpine Magnolia into SL's terminal/tank in Limay, Bataan, then loaded into M/Tkr.

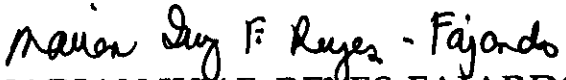
³⁶ Rollo, p. 154.

Malolos,³⁷ and that no ship came near M/Tkr. Malolos (e.g., to make loop loading possible) prior to December 20, 2016, when it was in Limay, Bataan.³⁸

Lastly, the Court in Division was correct in not giving credence to the Cargo Outturn Certificate. While the document was submitted as evidence, the person who actually prepared it was not presented in court. Thus, the information contained therein is merely hearsay. As opined by the Court in Division, “[a]t 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.”

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on July 17, 2020 and Resolution promulgated on September 29, 2021 rendered by the of the Third Division of this Court in CTA Case No. 9561 are **AFFIRMED**.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

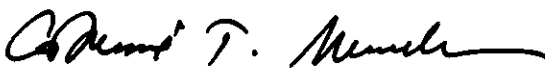
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

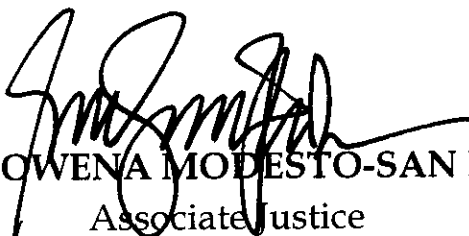

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

³⁷ See Judicial Affidavit of Capt. Javier P. Gocotano, Exhibit P-10, Docket (CTA Case No. 9561) – Vol. 1, pp. 358-359.

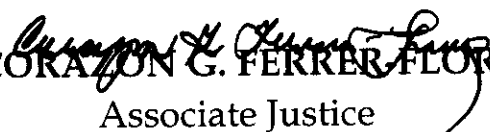
³⁸ See TSN for 23 May 2017 hearing, Docket (CTA Case No. 9561) – Vol. 3, p. 1119.


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice