



Republic of the Philippines
Supreme Court
Manila

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SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
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BY: R-JAVIER
TIME: 8:12

THE COMMISSIONER OF
CUSTOMS and the
UNDERSECRETARY OF THE
DEPARTMENT OF FINANCE,

G.R. No. 208318

Present:

Petitioners,

PERLAS-BERNABE, *SAJ.*, Chairperson,
LAZARO-JAVIER,
M. LOPEZ,
ROSARIO,
J. LOPEZ,** *JJ.*

- versus -

GOLD MARK SEA CARRIERS,
INC., as the registered owner of
the Barge "Cheryl Ann,"
Respondent.

Promulgated:

JUN 30 2021

X-----X

DECISION

LAZARO-JAVIER, *J.*:

Antecedents

OSM Shipping Phils., Inc. (OSM) entered into a Tow Hire Agreement with Fuel Zone Filipinas Corporation (Fuel Zone) for the barge "Cheryl Ann" which contained used oil for discharge or unloading in Manila.¹ The barge was chartered by Fuel Zone from its registered owner, respondent Gold Mark Sea Carriers, Inc. (Gold Mark).²

* Sometimes referred to as "Anne," in rollo.

** Designated as additional member per Special Order No. 2822 dated April 7, 2021.

¹ Rollo, p. 12.

² *Id.* at 167.

On August 23, 2006, OSM's M/T Jacob 1 towed the barge from the Republic of Palau all the way to the Port of Surigao where it temporarily stopped for emergency bunkering as it was allegedly running low on fuel and food provisions and was having a mechanical problem.

OSM notified the Port authorities and concerned agencies of the anchorage of M/T Jacob 1 at the Surigao City wharf and requested assistance pertaining to its entry and clearance formalities. The Surigao City Immigration Officer, the Bureau of Quarantine, and other pertinent government agencies later granted M/T Jacob 1 clearance to depart for Manila or Cebu for repairs as these cannot be done in Surigao.³

Even so, the Philippine Coast Guard, upon request of the District Collector of the Port of Surigao, stepped in and detained M/T Jacob 1 and the barge because of a report that the barge contained a prohibited cargo of used oil, sans the required importation permit from the government agency concerned. After due proceedings, a Warrant of Seizure and Detention docketed S.I. No. 01-2006 was issued on the barge and the cargo. A Supplemental Warrant of Seizure and Detention was also issued on M/T Jacob 1 docketed S.I. No. 01-2006-A relative to the importation, conveyance, and/or transport of unlawful materials in violation of Section 2530 of the Tariff and Customs Code of the Philippines (TCCP), as amended.

During the seizure proceedings, the parties agreed that the cases against the tugboat and the barge shall separately proceed pertaining to the illegal importation.⁴ But only OSM participated in the proceedings, during which, it adduced evidence on its behalf. Gold Mark, the registered owner of the barge, did not.⁵

By Order⁶ dated December 18, 2006, the District Collector of the Port of Surigao ruled, as follows, *viz.*:

WHEREFORE, premises considered, it is hereby ordered and decreed that the assailed Supplemental [W]arrant of Seizure and Detention issued against the tugboat M/Tug "JACOB 1" and the barge "CHERYL ANN" be DISMISSED for lack of legal and factual bases and that subject vessels be RELEASED to their respective registered owners, OSM Shipping Phils., Inc. for M/T "JACOB 1" and Gold Mark Sea Carriers, Inc., for barge "CHERYL ANN," upon proper identification, compliance with existing rules and regulations and subject to final approval of the Commissioner of Customs pursuant to Section 2313 of the Tariff and Customs Code of the Philippines, as amended.⁷

³ *Id.* at 12-13.

⁴ *Id.* at 12.

⁵ *Id.* at 125.

⁶ *Id.* at 13.

⁷ *Id.*

On April 13, 2007, a Disposition Form,⁸ as approved by Customs Commissioner Napoleon L. Morales (Commissioner Morales), affirmed with modification the ruling of the District Collector. He recommended to the Secretary of Finance the continued detention and immediate forfeiture of the barge “Cheryl Ann.” Commissioner Morales found that there was *prima facie* evidence of violation of Section 2530 of the TCCP when the barge entered the Philippine jurisdiction carrying used oil without the necessary importation clearances from the concerned government agencies. Since Gold Mark did not participate in the seizure proceedings despite notice, it failed to rebut the *prima facie* evidence of the imputed violation. Thus, there was sufficient basis to seize and forfeit the barge and the cargo.

By 3rd Indorsement⁹ dated May 9, 2007, the Department of Finance, through Undersecretary Gaudencio A. Mendoza, Jr. affirmed the recommendation of Commissioner Morales.

Accordingly, on May 17, 2007, Commissioner Morales issued a 4th Indorsement¹⁰ directing the District Collector of Port of Surigao to implement the 3rd Indorsement dated May 9, 2007.

Aggrieved, Gold Mark sought affirmative relief *via* a petition for review¹¹ with the Court of Tax Appeals (CTA)-Third Division docketed CTA Case No. 7671.

Ruling of the CTA-Third Division

By Decision¹² dated February 17, 2011, the CTA-Third Division ruled in favor of Gold Mark, *viz.*:

WHEREFORE, the Petition for Review is hereby **GRANTED**. Accordingly, the 3rd Indorsement dated May 9, 2007 issued by the Department of Finance, Undersecretary of the Legal and Revenue Operations Group, Gaudencio A. Mendoza, and the 4th Indorsement dated May 17, 2007 issued by the Bureau of Customs, Commissioner Napoleon L. Morales, insofar as barge “Cheryl Ann” is concerned, are hereby **REVERSED** and **SET ASIDE**. The respondent Commissioner of Customs is hereby **ORDERED** to **IMMEDIATELY RELEASE** the barge “Cheryl Ann” to petitioner.

SO ORDERED.¹³

⁸ *Id.* at 120-126.

⁹ *Id.* at 127.

¹⁰ *Id.* at 128.

¹¹ *Id.* at 129-142.

¹² Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas, *id.* at 290-308.

¹³ *Id.* at 308.



The CTA declared that there was no evidence to prove that the barge intended to defraud the government. The barge was not shown to have committed or attempted to commit illegal importation as to justify its forfeiture. As a non-motorized vessel, the barge was only forced to enter the Port of Surigao because the tugboat navigating it needed emergency repairs. In consonance with the axiom *the accessory follows the principal*, the barge as an accessory should likewise be released from liability as the principal, the tugboat was declared exempt from the penalty of forfeiture, applying Section 2530 of the TCCP.

The government's motion for reconsideration was denied under Resolution¹⁴ dated August 23, 2011.

Ruling of the CTA *En Banc*

On the government's petition for review,¹⁵ the CTA *En Banc* affirmed under Decision¹⁶ dated December 20, 2012. It sustained the factual finding of the CTA Third Division that the barge was merely an accessory of the principal, the tugboat M/T Jacob 1. Thus, the release of the tugboat from forfeiture should also be accorded to the barge.

It further ruled that despite its Charter Agreement with the cargo owner, the barge remained to be a common carrier which simply transported the cargo (used oil) for compensation. A time charter or voyage charter will not convert a common carrier into a private carrier. Being a common carrier, not chartered or leased, it is exempt from forfeiture under Section 2530(a) of the TCCP.

Too, it rejected the government's belated theory that carrying hazardous unit was *malum prohibitum* under Republic Act No. 6969 (RA 6969) or the Toxic Substances and Nuclear Wastes Control Act of 1990. It ruled that the government's invocation of this theory for the first time on motion for reconsideration came too late in the day, hence, should be barred.

By Resolution¹⁷ dated June 17, 2013, petitioners' motion for reconsideration was denied. The CTA *En Banc* noted that the tugboat had already been released upon order of the Pollution Adjudication Board of the Department of Environment and Natural Resources (DENR).

¹⁴ *Id.* at 333-337.

¹⁵ *Id.* at 338-376.

¹⁶ Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, *id.* at 11-27.

¹⁷ *Id.* at 115-119.

The Present Petition

The government,¹⁸ through the Commissioner of Customs and the Department of Finance, now faults the CTA *En Banc* for allegedly committing reversible error when it allowed the release of the barge, albeit it was used to carry and transport the illegal importation of used oil from Palau for unloading or discharge in the Philippines. The government posits that Gold Mark failed to rebut the *prima facie* evidence of illegal importation. It did not present any controverting evidence during the forfeiture proceedings showing that it had the necessary permit and licenses to import used oil into the Philippines. On the contrary, its charter agreement with the tugboat M/T Jacob 1 and the Maritime Industry Authority (MARINA) special permit¹⁹ covering the transaction both revealed that the indicated destination of the barge was Manila, not Malaysia. Hence, the intent to unload the cargo in the Philippines was amply proven.

Too, the principle of *accessory follows the principal* does not apply in the case of the tugboat and the barge here. For each of these two (2) had a separate obligation to comply – the tugboat, under the tow hire agreement, and the barge, under its charter agreement with the cargo owner. If at all, the barge should be considered the principal insofar as the prohibited cargo is concerned as it carried the greater valued property; the tugboat merely acted as an accessory.

As for the application of RA 6969, Gold Mark and the tugboat owner knew their common violation under the law. In fact, Gold Mark admitted that on behalf of the tugboat M/T Jacob 1, OSM paid a fine of ₱50,000.00 to the Pollution Adjudication Board of DENR, for which the tugboat was subsequently cleared by the Bureau of Quarantine. Precisely, OSM paid the fine because it was fully aware of its violation under the law. Consequently, Gold Mark cannot plead ignorance of this violation, let alone, fault the government for purportedly bringing to fore this violation only in its motion for reconsideration before the CTA *En Banc*.

Under Resolution²⁰ dated August 14, 2013, the Court granted the government's prayer for temporary restraining order against the implementation of the herein assailed Decision dated December 20, 2012 and Resolution dated June 17, 2013.

In yet another Resolution²¹ dated November 14, 2016, the Court dispensed with respondent's comment on the petition due to the latter's failure to file the same despite the Court's repeated directive.

¹⁸ Represented by the Office of the Solicitor General through Solicitor General Francis H. Jardeleza (now a retired member of the Court), Assistant Solicitor General Thomas M. Laragan, Senior State Solicitor Nyriam Susan O. Sedillo-Hernandez (now an Assistant Solicitor General).

¹⁹ *Rollo*, pp. 224-225.

²⁰ *Id.* at 463.

²¹ *Id.* at 499-500.

Issue

DID THE COURT OF TAX APPEALS *EN BANC* COMMIT REVERSIBLE ERROR WHEN IT DECLARED THAT THE BARGE “CHERYL ANN” WAS NOT INVOLVED IN ILLEGAL IMPORTATION?

Discussion

The findings of fact of the CTA are generally regarded as final, binding, and conclusive upon this Court. This is because by the very nature of its functions, the CTA is dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject. As a rule, therefore, its factual findings shall not be reviewed nor disturbed on appeal.²²

By way of exception though, a review of these factual findings by the Court is warranted when the CTA, as in this case, was shown to have disregarded relevant facts and evidence, which if considered, would alter the final outcome of the case. Here, the CTA *En Banc* disregarded the ample evidence on record, indicating a clear intent to commit illegal importation which otherwise warrants the forfeiture of the barge “Cheryl Ann.”

Section 1202 of the TCCP, as amended provides:

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

The act of importation commences from the time the carrying vessel or aircraft enters the Philippine territory and the carrying vessel or aircraft unloads or intends to unload the article or goods in the Philippines. Thus, mere intent to unload into the Philippines consummates importation.²³ Intent, being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts, and therefore, can only be proved by unguarded expressions, conduct, and attendant circumstances.²⁴

²² See *Commissioner of Internal Revenue v. Philex Mining Corp.*, G.R. No. 230016, November 23, 2020.

²³ *7107 Islands Shipping Corp. v. Secretary of Finance*, G.R. No. 215051 (Notice), September 30, 2020.

²⁴ *Feeder International Line, Pte., Ltd. v. Court of Appeals*, 274 Phil. 1143, 1152-1153 (1991).

Contrary to the findings of the CTA *En Banc*, the cargo of barge "Cheryl Ann" was not bound for Malaysia, but in truth, was bound to unload its cargo in the Philippines. *Consider:*

First. The Charter Agreement²⁵ between Fuels Zone and Gold Mark, in no uncertain terms, indicated that the cargo will be discharged in the Philippines, *viz.:*

CHARTER AGREEMENT
(TIME CHARTER)

CHARTERER

FUELS ZONE FILIPINAS
CORP.
Suite 2048 Unit 33 Bldg. A
SM Megamall, Edsa
Mandaluyong

OWNER/OPERATOR

GOLDMARK SEA CARRIERS,
INC.
Unit 8, Gold Park Center
88 Meralco Ave., Pasig City

CARGO	....	Used Oil
BARGE NAME	....	Barge Cheryl Anne
TIME CHARTER RATE	....	Php 850,000.00
CAPACITY	....	2,000,000 liters
LOADING POINT	....	Palau
DISCHARGE POINT	....	Philippines
x x x ²⁶ (Emphasis supplied)		

While there was a finding that the tugboat was *en route* to Malaysia, the same did not alter the fact that the barge, together with its cargo, had only one (1) destination, the Philippines.

Too, the MARINA special permit issued to OSM for this specific towing arrangement likewise showed that there was only one place where the cargo was to be discharged - Manila, thus:

Pursuant to the provisions of Presidential Decree No. 474 and in view of the application dated 09 June 2006 by **OSM SHIPPING PHILS., INC.** a company duly organized and existing under the laws of the Philippines, owner/operator of the ships **M/Tug "Jacob 1"** and **Barge "Cheryl Ann[e]"** of 208.00 and 796.99 gross tonnage burden, respectively duly documented for domestic trade: PERMISSION are hereby granted for the said ships to engage temporarily in the overseas trade subject to the following conditions:

1. That the ships' overseas operations shall be up to 19 September 2006 only **for the towing of empty barge from Manila to Palau**

²⁵ *Rollo*, pp. 167-169.

²⁶ *Id.* at 167.

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and to discharge used oil loaded in the barge from Palau-Iloilo-Manila;

x x x x²⁷ (Emphasis supplied)

Indeed, records showed that all along, the Philippines, no other, was the only and final destination of the illegal importation of used oil on board the barge "Cheryl Ann." It was an illegal importation because it was not covered by a corresponding importation permit in violation of existing laws and rules and regulations.

In forfeiture proceedings, the degree of proof required is merely substantial evidence which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.²⁸ Here, the government had sufficiently established that an illegal importation, or at least an attempt to commit it, was done by loading the items on the barge "Cheryl Ann" for transport to and unloading in the Philippines. The use of the barge to transport the illegal importation warranted the forfeiture of both the barge and the illegal cargo pursuant to Section 2530 of the TCCP.

Second. Section 2530 (a) and (k) of the TCCP command that any vessel or cargo used in illegal importation or exportation into or from the Philippines shall be subjected to forfeiture, thus:

SECTION 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. — Any vehicle, **vessel** or aircraft, cargo, article and other objects shall, **under the following conditions be subjected to forfeiture:**

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

x x x x

k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere

²⁷ *Id.* at 224.

²⁸ *Feeder International Line, Pte., Ltd. v. Court of Appeals*, supra note 24, at 1152.

conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle but **the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;**

x x x x (Emphases supplied)

Gold Mark argues that it is exempt from forfeiture under Section 2530(a) of the TCCP because it is a common carrier and not “merely carrying or holding on board of contraband or smuggled articles in commercial quantities.” The CTA even agreed that its Charter Agreement, being a time charter or voyage charter, did not operate to convert it to a private carrier.

To be exempt from forfeiture, Section 2530(a) and (k) of the TCCP explicitly require that the vessel be a common carrier, not a chartered or leased vessel. Here, Gold Mark’s Charter Agreement with the cargo owner belies its claim that it is exempt from forfeiture under Section 2530. The law does not distinguish the type of charter agreement. When the law does not distinguish, neither should the court.²⁹ So long as the vessel is leased or chartered, it is no longer exempt from forfeiture under Section 2530(a) and (k).

As shown here, Gold Mark’s vessel was leased by the cargo owner and used to transport the undocumented cargo from Palau and actually entered the Philippine port. Indubitably, it is subject to forfeiture under Section 2530 of the TCCP. As it was, Gold Mark failed to adduce other evidence to disprove its knowledge and participation in the unlawful importation of the cargo owner.

Nonetheless, we agree with the CTA *En Banc* that the government is already barred from raising the *malum prohibitum* character of carrying and transporting into the country the subject item per RA 6969 or the Toxic Substances and Nuclear Wastes Control Act of 1990. For the government belatedly raised the issue for the first time only on motion for reconsideration.

Well settled is the rule that a party cannot change its theory of the case or cause of action on appeal. Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests on the fundamental tenets of fair play.³⁰


²⁹ See *Saint Louis University, Inc. v. Olarez*, G.R. No. 197126, January 19, 2021

³⁰ *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, 535 Phil. 481, 490 (2006) citing *Mon v. Court of Appeals*, 471 Phil. 65, 73-75 (2004).

At any rate, the forfeiture of the barge "Cheryl Ann" being in accordance with law and the evidence remains in place.


ACCORDINGLY, the Petition is **GRANTED**. The Decision dated December 20, 2012 and the Resolution dated June 17, 2013 in CTA EB No. 825 are **REVERSED and SET ASIDE**. The 3rd Indorsement dated May 9, 2007 of the Department of Finance, through Undersecretary of the Legal and Revenue Operations Group, Gaudencio A. Mendoza, Jr.; and the 4th Indorsement dated May 17, 2007 of the Bureau of Customs through Commissioner Napoleon L. Morales, both ordering the seizure and forfeiture of the barge "Cheryl Ann" in favor of the government are **REINSTATED**.

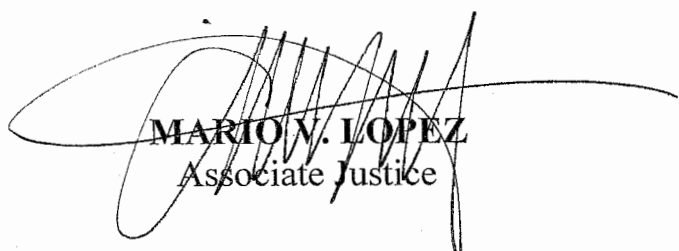
SO ORDERED.



AMY C. LAZARO-JAVIER
Associate Justice


WE CONCUR:

With concurring opinion


ESTELA M. BERLAS-BERNABE
Senior Associate Justice
Chairperson

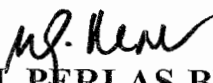

MARION V. LOPEZ
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision has been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson – Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice