



MEMORANDUM

FOR : **GEN. BIENVENIDO R. DATUIN**
Chief, Public Information and Assistance Division

FROM : **ATTY. WILLIAM L. BALAYO**
Acting District Collector, Port of Limay *Handwritten signature*

SUBJECT : **REQUEST FOR THE PUBLICATION OF NOTICE
OF DECISION/PARTIAL ORDER ON PORT OF LIMAY SEIZURE
CASE NO. 002-2021**

DATE : 23 March 2021

REFERENCES:

- a. Partial Order on Warrant of Seizure and Detention with Seizure Identification No. 002-2021 issued by Port of Limay Acting District Collector Atty. William B. Balayo

DISCUSSIONS:

1. On 01 March 2021, pursuant to the re-inventory report, an Amended Warrant of Seizure and Detention with Seizure Identification No. 002-2021 was issued by Atty. William B. Balayo, Acting District Collector, Port of Limay against the vessel, trucks, and 17,314 sacks of rice and 1,940 master cases of cigarettes.
2. On 09 March 2021, Notices of Hearing was issued by the hearing officer and the same were posted in conspicuous places in Port of Limay and on the official website of the Bureau.
3. No claimants have appeared nor filed any claims to the shipment of 17,314 sacks of rice and 1,940 master cases of cigarettes during the conduct of initial hearing.
4. On 23 Mar 2021, a Partial Order on Warrant of Seizure and Detention with Seizure Identification No. 002-2021 was issued by Atty. William B. Balayo, Acting District Collector, Port of Limay forfeiting the subject shipment *ipso facto* in favor of the government.
5. The claimant/s on the aforementioned shipment have unknown identification and place of residence. Thus, personal service of the Notice of Decision/Partial Order is unfeasible.

6. Under Section 1119 of the CMTA, "service of warrant to an unknown owner shall be effected by posting the warrant for fifteen (15) days in a public place at the concerned district, and by electronic or printed publication". Hence, the publication on the Bureau's official website.
7. To effectively serve the Notice of Decision/Partial Order against the subject goods covered by the abovementioned seizure case with unknown claimant/s and legally proceed with the seizure and forfeiture proceedings, we request the publication of the Notices of Hearing thru the Public Information and Assistance Division (PIAD).

For appropriate action.

A handwritten signature in black ink, appearing to be 'yam'.



REPUBLIC OF THE PHILIPPINES

**PORT OF LIMAY
 SEIZURE
 IDENTIFICATION
 CASE NO. 002-2021**

- versus -

Cargo Ship, LCT "Yellow River", with Official Number 00-00026867, Trailer Truck with Tractor Head plate number (ABI 5280) and its attached Trailer with MV File Number 0301-01245959, Blue HYUNDAI truck 25 Ton lifter with Plate No. NBB-4691, Blue Tadano rough terrain crane, White Foton Ten Wheeler Truck with Plate No. ABI5281 (with marking "United Asia Automotive Group Inc.), White Foton Ten Wheeler Truck with Plate No. ABI5281 (with marking "United Asia Automotive Group Inc.), Yellow Isuzu Ten Wheeler Truck with MV File 038600000137346 (with marking "Edmundo Dasig III"), Black with Skyblue FUSO Ten Wheeler Truck with Plate No. CBJ-2017 (with marking "United Asia Automotive Group Inc.), White FUSO Ten Wheeler Truck with MV File 036400000115356 (with marking "Agripina Pagsibigan), White Isuzu Ten Wheeler Truck with MV File 038600000309772 (with marking "DIZON Neil Erwin B), Red Freightliner Ten Wheeler Truck with Plate No. AVA4567 (with marking "Octomic Trading & Logistics Services Co. Ltd."), White FAW Ten Wheeler Truck with Plate No. QUO733 (with marking "SBM Leasing Corp."), White International Harvester Ten Wheeler Truck with MV File 134000000169717 (with marking "Michael Escalona"), White HOWO Ten Wheeler Truck with MV File 130100001086763 (with marking "Platinum Reward Training"), which is loaded with a total of 17, 314 sacks of Rice (Brand "Mickey Mouse" Premium Jasmine Rice, "Minnie Mouse" Premium Jasmine Rice, and "Brutus" Premium Glutinous Rice with markings "Made in Vietnam"), and 1,940 Master Cases of Cigarettes (Brands: Marvels, D&B, Mighty and Two Moon).

**VON MICHAEL SANCHEZ,
 EDMER MANGUNAY PAGSIBIGAN,
 UNKNOWN CLAIMANTS**

Claimant/Consignee

X-----X

NOTICE OF DECISION

TO:

THE GOVERNMENT PROSECUTOR
Prosecution and Litigation Division
Legal Service, RCMG

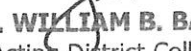
UNKNOWN CLAIMANTS

LORECEL R. IBANEZ
Deputy Collector for Operations
Port of Limay

GREETINGS:

NOTICE is hereby given that a Decision/Partial Order was issued on 23 March 2021, ordering the forfeiture of the subject shipment in favor of the government. A copy of the said Decision/Partial Order is hereto attached for information.

Issued this 23rd day of March 2021 at the Port of Limay, Mariveles, Bataan, Philippines.


ATTY. WILLIAM B. BALAYO
Acting District Collector
Port of Limay

CC:

- 1) Unit/Office in custody of the articles;
- 2) Apprehending Unit/Office – Port of Limay
- 3) Chief, ACDD
- 4) Resident Auditor/COA
- 5) Account Management Office (AMO)

NOTICE OF DECISION

TO:

THE GOVERNMENT PROSECUTOR
Prosecution and Litigation Division
Legal Service, RCMG


UNKNOWN CLAIMANTS

LORECEL R. IBANEZ
Deputy Collector for Operations
Port of Limay

GREETINGS:

NOTICE is hereby given that a Decision/Partial Order was issued on 23 March 2021, ordering the forfeiture of the subject shipment in favor of the government. A copy of the said Decision/Partial Order is hereto attached for information.

Issued this 23rd day of March 2021 at the Port of Limay, Mariveles, Bataan, Philippines.


ATTY. WILLIAM B. BALAYO
Acting District Collector
Port of Limay

CC:

- 1) Unit/Office in custody of the articles;
- 2) Apprehending Unit/Office – Port of Limay
- 3) Chief, ACDD
- 4) Resident Auditor/COA
- 5) Account Management Office (AMO)



REPUBLIC OF THE PHILIPPINES

- versus -

**PORT OF LIMAY
 SEIZURE
 IDENTIFICATION
 CASE NO. 002-2021**

Cargo Ship, LCT "Yellow River", with Official Number 00-00026867, Trailer Truck with Tractor Head plate number (ABI 5280) and its attached Trailer with MV File Number 0301-01245959, Blue HYUNDAI truck 25 Ton lifter with Plate No. NBB-4691, Blue Tadano rough terrain crane, White Foton Ten Wheeler Truck with Plate No. ABI5281 (with marking "United Asia Automotive Group Inc.), White Foton Ten Wheeler Truck with Plate No. ABI5281 (with marking "United Asia Automotive Group Inc.), Yellow Isuzu Ten Wheeler Truck with MV File 038600000137346 (with marking "Edmundo Dasig III"), Black with Skyblue FUSO Ten Wheeler Truck with Plate No. CBJ-2017 (with marking "United Asia Automotive Group Inc.), White FUSO Ten Wheeler Truck with MV File 036400000115356 (with marking "Agrimina Pagsibigan), White Isuzu Ten Wheeler Truck with MV File 038600000309772 (with marking "DIZON Neil Erwin B), Red Freightliner Ten Wheeler Truck with Plate No. AVA4567 (with marking "Octomic Trading & Logistics Services Co. Ltd."), White FAW Ten Wheeler Truck with Plate No. QUO733 (with marking "SBM Leasing Corp."), White International Harvester Ten Wheeler Truck with MV File 134000000169717 (with marking "Michael Escalona"), White HOWO Ten Wheeler Truck with MV File 130100001086763 (with marking "Platinum Reward Training"), which is loaded with a total of 17, 314 sacks of Rice (Brand "Mickey Mouse" Premium Jasmine Rice, "Minnie Mouse" Premium Jasmine Rice, and "Brutus" Premium Glutinous Rice with markings "Made in Vietnam"), and 1,940 Master Cases of Cigarettes (Brands: Marvels, D&B, Mighty and Two Moon).

**VON MICHAEL SANCHEZ,
 EDMER MANGUNAY PAGSIBIGAN,
 UNKNOWN CLAIMANTS**

Claimant/Consignee

X-----X

PARTIAL ORDER

This resolves the seizure and forfeiture proceedings instituted against the **17,314 sacks of rice (BRAND: Mickey Mouse Premium Jasmine Rice, Minnie Mouse Premium Jasmine Rice, and Brutus Premium Glutinous Rice with markings "Made in Vietnam")** and **1,940 master cases of cigarettes (BRAND: Marvels, D&B, Mighty, and Two Moon)** for violation of Sections 117, 1113 (f) and (l-1,4, and 5) of R.A. 10863 otherwise known as Customs Modernization and Tariff Act (CMTA) in relation to National Tobacco Administration (NTA) Memorandum Circular No. 03, Series of 2004, Section 10 of the National Tobacco Administration Board Resolution No. 079-2005 or the Amended Rules and Regulations Governing the Exportation and Importation of Leaf Tobacco and Tobacco Products pursuant to Executive Order No. 245, its Rules and Regulations, Republic Act No. 10845, otherwise known as "*Anti Agricultural Smuggling Act of 2016*", and Section 155.1 of Republic Act No. 8293, commonly known as "*Intellectual Property Code of the Philippines*".

FACTS OF THE CASE

On 23 and 24 February 2021 at the Municipality of Limay, Bataan, a checkpoint was conducted by the Limay MPS wherein the above-captioned trucks were loaded with sacks of rice and master cases of cigarettes without any pertinent shipping documents and were apparently part of the shipment unloaded from LCT "Yellow River".

An Apprehension Report was issued by SA1 Samuel M. Delos Santos, SA1 Rodney June L. Cruz, IA1 Gino L. Roldan, and IA1 Neil B. Rafols, ESS-Port of Limay, recommending for the issuance of a Warrant of Seizure and Detention against the entire shipment, vessel, and trucks for violation of Sections 117, 1113 (a), (b), (c), (k), and (l-1,4, and 5) of the CMTA, in relation to National Tobacco Administration Board Resolution No. 079-2005 or the Amended Rules and Regulations Governing the Exportation and Importation of Leaf Tobacco and Tobacco Products pursuant to E.O. No. 245, its Rules and Regulations, R.A. No. 10845, otherwise known as the Anti-Agricultural Smuggling Act of 2016, and R.A. No. 8293, commonly known as the Intellectual Property Code of the Philippines.

On even date, Atty. William B. Balayo, Acting District Collector, Port of Limay, issued a Warrant of Seizure and Detention with Seizure Identification Case No. 002-2021 against the subject shipment, vessel, and trucks for violation of Sections 117 and 1113 of the CMTA in relation to R.A. No. 10845 and R.A. No. 8293.

By virtue of the re-inventory report, an Amended Warrant of Seizure and Detention with Seizure Identification Case No. 002-2021 providing for the total number of sacks of rice and master cases of cigarettes seized was issued. The said amended WSD and Notice were posted at the Port of Limay on 01 March 2021.

A Notice of Hearing was then issued on 09 March 2021 and posted in Port of Limay and on the official website of the Bureau. A copy of the Notice was also served thru mail/email to the parties.

On 19 March 2021, a hearing was conducted by the hearing officer, Atty. Kayrel V. Padilla thru videoconference (Microsoft Teams). Atty. Virson A. Vispo appeared as the government prosecutor and represented the Bureau. Port of Limay's Acting District Collector, Atty. William B. Balayo and representatives from the ESS and CIIS of the Port of Limay were also present during the hearing. The Claimants for the vessel and trucks

appeared and set their claims. However, none of the claimants/attendees were claiming for the shipment of rice and cigarettes.

There being no claimant/s to the shipment of 17, 314 sacks of Rice (Brand "Mickey Mouse" Premium Jasmine Rice, "Minnie Mouse" Premium Jasmine Rice, and "Brutus" Premium Glutinous Rice with markings "Made in Vietnam"), and 1,940 Master Cases of Cigarettes (Brands: Marvels, D&B, Mighty and Two Moon) after fifteen (15) days from the posting and publication of the Amended Warrant of Seizure and Detention and of the Notice of Hearing and to file Claim, the forfeiture proceedings against the subject shipment is deemed submitted for resolution. The forfeiture proceedings against the vessel and trucks shall be resolved separately after the submission of position paper/comment by the parties.

ISSUE

The issue to be resolved is whether the subject shipments, 17, 314 sacks of Rice (Brand "Mickey Mouse" Premium Jasmine Rice, "Minnie Mouse" Premium Jasmine Rice, and "Brutus" Premium Glutinous Rice with markings "Made in Vietnam"), and 1,940 Master Cases of Cigarettes (Brands: Marvels, D&B, Mighty and Two Moon), may be forfeited in favor of the government under Sections 117 and Section 1113 of the Customs Modernization and Tariff Act (CMTA).

DISCUSSION

The failure of the claimant to register their claims in this proceeding and to submit documentary and/or testimonial evidence in support of such claim is equivalent to a waiver of right. Such waiver will not offend the time-honored principle and constitutionally guaranteed "due process principle" since the claimants were given ample time to present their case and prove their cause.

In the case of **Ledesma vs. Court of Appeals (G.R. No. 166780, December 27, 2007, 541 SCRA357)**, the Supreme Court had the occasion to rule that:

The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to seek a reconsideration of the action or ruling complained of xxx

In the present, the claimants were undeniably given their day and the opportunity to elaborate their claim and to present supporting evidence to prove the same. While the Notices of Hearing were not personally served to the claimants as they were nowhere to be found, records would show that the notices were properly posted at conspicuous places located at Port of Limay and simultaneously posted on the Bureau's official website.

Section 1121 of the CMTA states:

"Sec. 1121. Proceedings in Case of Property Belonging to Unknown Parties. – If, within fifteen (15) days after service of warrant, no owner or agent can be found or appears before the District Officer, the seized goods shall be forfeited *ipso facto* in favor of the government to be disposed of in accordance with this Act."

Thus, this Office considers their non-appearance a waiver of their right to present their case.

**WARRANT OF SEIZURE AND
DETENTION WAS FOUNDED
ON A PROBABLE CAUSE**

Section 1117 of the CMTA states that the District Collector shall have the authority to issue a warrant of seizure of the goods upon determination of probable cause. Hence, upon the determination of probable cause, it is within the power of the District Collector to issue a Warrant of Seizure and Detention.

Probable cause is defined as "such reasons, supported by facts and circumstances, as will warrant a cautious man in the belief that his action, and the means taken in persecuting it, are legally just and proper". In this case, the requirement of the existence of probable cause for the issuance of a warrant of seizure and detention is satisfied when it came to the knowledge of the District Collector, that a shipment of sacks of rice of foreign origin and master cases of cigarettes are unloaded from the vessel, "Yellow River" and loaded to the apprehended trucks without the pertinent shipping documents in violation of Sections 117 and Section 1113 of the Customs Modernization and Tariff Act (CMTA).

**BURDEN OF PROOF ON SEIZURE CASE
MUST BE BORNE BY THE CLAIMANT**

The subject shipment of sacks of rice and master cases of cigarettes have already been seized by the government through the issuance of the Warrant of Seizure and Detention (WSD) by the Acting District Collector of Port of Limay. Upon the issuance of the WSD, it must be brought to the fore that the burden of proof in forfeiture proceedings shall be borne by the claimant.

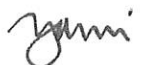
The burden of proof rests with the claimant to show sufficient proof that indeed the shipment is not tainted with any fraudulent act/scheme nor a prohibited importation, nor its release is not contrary to law. **Section 1123 of the CMTA** states:

"In all proceedings for the forfeiture of any vehicle, vessel, aircraft, or goods under this Act, the burden of proof shall be borne by the claimant."

It must be noted that despite the proper service of Notices for the conduct of this seizure and forfeiture proceedings, no claimants appeared nor filed their verified position paper to oppose the same. Thus, the charges and violation of Customs laws imputed against the subject articles remain unrefuted and uncontroverted.

**THE SHIPMENT OF SACKS OF RICE
AND MASTER CASES OF CIGARETTES ARE
PROPER SUBJECT OF SEIZURE
AND FORFEITURE PROCEEDINGS**

The subject goods were seized for violation of Sections 117 and Section 1113 of the Customs Modernization and Tariff Act (CMTA). Section 117 provides for the goods which are subject to regulation.



Section 117 of the CMTA provides:

Goods which are subject to regulation shall be imported or exported only after securing the necessary import or export permits, clearances, licenses, and any other requirements, prior to importation or exportation. x x x

The subject shipment was imported without the necessary permit/clearance from the regulating agencies. Undoubtedly, its importation is a clear violation of the custom's law in relation to National Tobacco Administration Board Resolution No. 079-2005 and R.A. 10845.

In addition, Section 5 of R.A. 10845 provides for the presumption of agricultural smuggling, to wit, *"mere possession of rice of any agricultural product under this Act, which has been the subject of smuggling, entered into the Philippines other than the BCC controlled ports or without the necessary permits shall be prima facie evidence of smuggling."*

Further, **Section 1113, paragraph (f) and (I-1, 4, and 5) of the CMTA** states:

Property that shall be subject to seizure and forfeiture include:

x x x

(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 and the exportation of the former; x x x

(I) 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

(4) on the strength of a false invoice or other document executed by the owner, importer, exporter, or consignee concerning the importation of such goods; or

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


Based on the foregoing and from the records of the case, the shipment of 17, 314 sacks of Rice (Brand "Mickey Mouse" Premium Jasmine Rice, "Minnie Mouse" Premium Jasmine Rice, and "Brutus" Premium Glutinous Rice with markings "Made in Vietnam"), and 1,940 Master Cases of Cigarettes (Brands: Marvels, D&B, Mighty and Two Moon) were imported to the Philippines in contrary to customs laws.

WHEREFORE, premises considered and by virtue of the authority vested in this Office by law, it is hereby ORDERED AND DECREED that the shipment of **17, 314 SACKS OF RICE (BRAND "MICKEY MOUSE" PREMIUM JASMINE RICE, "MINNIE MOUSE" PREMIUM JASMINE RICE, AND "BRUTUS" PREMIUM GLUTINOUS RICE WITH MARKINGS "MADE IN VIETNAM")**, AND **1,940 MASTER CASES OF CIGARETTES (BRANDS: MARVELS, D&B, MIGHTY AND TWO MOON)**, subject matter of this instant case be **FORFEITED** in favor of the government and the same to be disposed of in the manner prescribed by law.

Let copies of the Decision be furnished all parties and offices for their information and guidance.

SO ORDERED.

Port of Limay, Bataan, Philippines, 23 March 2021.


ATTY. WILLIAM B. BALAYO
Acting District Collector
Port of Limay