



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

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**OFFICE OF THE DISTRICT COLLECTOR
PORT OF LIMAY**

REPUBLIC OF THE PHILIPPINES

PORT OF LIMAY
SEIZURE IDENTIFICATION
NO. 02-2024

BOC-48- 00668

-versus-

**VESSEL M/T JASON BRADLEY (M/T
DOROTHY UNO) CARRYING
4,100LITERS OF UNMARKED DIESEL.**

ROMNICK C. PONESTAS
Claimant/Owner.

X-----X

RESOLUTION

This resolves the seizure and forfeiture proceedings instituted against the herein articles/goods pursuant to Section 117 and Section 1113 (a), (f), (k), (l.1) of the Customs Modernization and Tariff Act (CMTA), in relation to DOF-BOC-BIR Joint Circular 001.2021 Fuel Marking Program pursuant to R.A. No. 10963 otherwise known as the "Tax Reform for Accreditation and Inclusion (TRAIN)" Law.

The antecedent facts of the instant seizure case are as follows:

On 28 July 2024, an information was released to SP/CAPT. Robert Espinosa, the then Port of Limay ESS District Commander, that the subject vessel submerged in an unidentified location Southeast of Brgy. Mt. View Mariveles, Bataan during the onslaught of typhoon "Carina". Accordingly, coordination with the Philippine Coast Guard (PCG) was made in order to shed light on the incident. However, there was no further information provided by PCG personnel on whether or not M/T Jason Bradley contains any fuel product or if there is a circumstance of oil spill caused by the subject vessel.

In a letter dated 14 August 2024, the National Bureau of Investigation (NBI) – Bataan District Office thru Agent-in-Charge SA Nathaniel T. Ramos requested for assistance to conduct collection and testing of fuel cargo samples from the subject vessel. Still, the vessel was submerged, and collection of samples is deemed inappropriate and unsafe. Hence, there is a need to conduct refloating operations on the subject vessel before samples can be taken due to possible environmental hazards, such as oil spill and seawater pollution.

On 26 September 2024, BOC Limay Mission Order No. LMY-2024-45A was issued. The composite team of ESS-CPD Limay, Philippine Coast Guard, Officials from Brgy. Mt. View in coordination with NBI Bataan, were able to board the subject vessel and opened all six (6) compartments and collected samples therein.

Initial testing of the sample taken from Compartment 3 "(P3)" of the aforementioned vessel, which was a diesel fuel yielded "Failed" result in the Fuel Marking Test conducted by SGS (Fuel Marking Service Provider of the Bureau of Customs). The "Failed" result sampled means the fuel was unmarked. Similarly, the said sample was brought to SGS Subic for confirmatory testing and yielded the same result as "Failed".





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Based on SGS report thru an electronic mail dated 30 September 2024, M/T Jason Bradley compartments "P1", "P2", "S1", "S2" and "S3", which were tested utilizing a Water Finder Solution all yielded a "Water" findings, except compartment 3 which was found to contain diesel fuel and found to be unmarked

On 27 September 2024, Mission Order No. LMY 2024-52 was issued to the ESS and Assessment Division to conduct inventory of the diesel fuel contained in the subject vessel. Thereafter, Acting Customs Operations Officer III Clarissa Grace A. Apor, and Acting Customs Officer III Vince Anthony A. Parallag noted the presence of 4,100 liters of unmarked diesel valued at **Php192,582.42** and appraised the value of the vessel at **Php22,082,988.99**. The valuation was based at the time of the inventory and subject to Imports and Assessment Service (IAS) clearance/approval.

In a Memorandum dated 01 October 2024, SP/MAJ. Ernesto T. Pracale Jr., BOC ESS Limay District Commander, Special Agent II Lamberto D. Obeya, Acting COOIII Clarissa A. Apor and Acting COOIII Vince Anthony A. Parallag recommended the issuance of a Warrant of Seizure and Detention (WSD) against the subject vessel "M/T Jason Bradley" and the 4,100 liters of unmarked diesel.

Finding existence of probable cause, the District Collector issued Warrant of Seizure and Detention (WSD) with Seizure Identification No. 02-2024 dated 02 October 2024 against the subject goods/articles pursuant to Section 117 and Section 1113 (a), (f), (k), (l.1) of the Customs Modernization and Tariff Act (CMTA), in relation to DOF-BOC-BIR Joint Circular 001.2021 Fuel Marking Program pursuant to R.A. No. 10963 otherwise known as the Tax Reform for Accreditation and Inclusion (TRAIN) Law.

Currently, the subject goods/articles and its conveyance are stored at the Orion Dockyard Inc. for safekeeping and underguarding by Enforcement and Security Service (ESS).

A notice was sent directing the claimant/owner to appear in a preliminary conference on the above-entitled case on 18 November 2024. Further, a notice of final hearing was sent to the claimant/owner to attend a hearing set for the said purpose on 28 January 2025. On both occasions, the claimant/owner herein failed to appear, prompting this Office to conclude that the claimant/owner is no longer interested in the prosecution of their case or waiving their rights over the said articles/goods and its conveyances.

Notwithstanding, the Government Prosecutor assigned in this case submitted its Position Paper/Comment. Thus, the instant case was submitted for resolution based on the uncontroverted evidence on record.

The issue to be resolve in this instant case is whether or not the subject article/goods and its conveyance should be forfeited.

At the outset, the mandatory marking of all petroleum products is expressly provided under Republic Act No. 10963 otherwise known as "Tax Reform for Acceleration and Inclusion Law (TRAIN)". Section 44 of the said law specifically provides as follows:

"Section 44. A new section designated as Section 148-A under Chapter V of the NIRC, as amended, is hereby inserted to read as follows:





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Section 148-A. Mandatory Marking of all Petroleum Products. – In accordance with the rules and regulations to be issued by the Secretary of Finance, in consultation with the Commissioner of Internal Revenue and Commissioner of Customs and in accordance with the Secretary of Energy, the Secretary of Finance shall require the use of fuel marking or similar technology on petroleum products and that refined, manufactured or imported into the Philippines, and that are subject to the payment of taxes and duties, such as but not limited to, unleaded premium gasoline, kerosene, and diesel fuel oil after the tax and duties thereon have been paid. The **mandatory marking of all petroleum products** shall be in accordance with the following:xxx” (Emphasis supplied.)

In this instant case, it is very evident from the findings of SGS Field Technician who conducted the sampling of diesel products and thereafter the Non-Fixed Location Test Report that the diesel fuel stored in Compartment 3 (“P3”) of the subject vessel was unmarked. Needless to say, the findings resulted the same in the Confirmatory Testing. Thus, a clear violation of the above-cited provisions of CMTA, TRAIN Law and DOF-BOC-BIR Joint Circular.

About the foregoing, DOF-BOC-BIR Joint Circular No. 001-2021 Prescribing the Implementing Guidelines for Field Testing under Fuel Marking Program pursuant to TRAIN Law, provides for the treatment of unmarked fuel. Section 7 of said Joint Circular expressly provides as follows:

“Section 7. Treatment of Unmarked Fuel, Diluted Marked Fuel or Containing Counterfeit Fuel Marker. **Petroleum products found without Official Marker or does not contain the required level of Official Fuel Marker, shall be subject to duties and taxes, inclusive of appropriate fines, penalties, without prejudice to the confiscation and forfeiture of such Unmarked or Diluted Fuel and the filing of appropriate criminal case. xxx**” (Emphasis and underscoring supplied.)

It must be noted that the claimant/owner failed to prove or show the source of the articles/goods and payment of customs duties and taxes thereon. Likewise, no documents, clearances or permits were presented to demonstrate that the articles/goods were locally purchased. The failure to present payment of duties and taxes constitutes *prima facie* evidence that the subject articles/goods were smuggled or were not process through customs processes and formalities.

In view of the reports, physical examinations and records of the case, it cannot be denied that the subject articles/goods violated the provision DOF-BOC-BIR Joint Circular 001-2021 in relation to Section 1113 of the CMTA. Corollarilly, in the absence of any evidence to refute the violation charged against the same, and based from the foregoing





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premises, this Office finds the above-described articles are liable for forfeiture for violation of the above-mentioned provisions of law.

Furthermore, **Section 1113** "*Property Subject to Seizure and Forfeiture*".- Property that shall be subject to seizure and forfeiture include:

"x x x x x x x x x

(k) Any conveyance actually used for transport of goods subject to forfeiture of 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...xxx**

(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;

(i) x x x x x x 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;
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.

"x x x x x x x x x

The Government Prosecutor is correct when it stressed, that:

"22. ...xxx that in the event that the petroleum products which do not contain official marker or which contain the official marker but

