ADMINISTRATIVE DECISION

BOC MEMORANDUM CIRCULAR NO. 369-98, November 09, 1998

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Attached is the Resolution issued on May 29, 1998 in O.P. Case No. 98-F8405 entitled Atty. Quirino A. Marquinez vs. Guillermo L. Parayno, Jr., dismissing the complaint filed against the respondent.

For your information.

Adopted: 09 Nov. 1998

(SGD.) JULITA S. MANAHAN
Deputy Commissioner
Internal Administration Group

"Attachment"

ATTY. QUIRINO A. MARQUINEZ,

Complainant,

-versus- O.P. CASE NO. 98-F-8405
(PCAGC-ADM-97-0428)

GUILLERMO L. PARAYNO, JR.,

Respondent.

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RESOLUTION

This administrative investigation stemmed from an affidavit-complaint filed by Atty. Quirino A. Marquinez with the Presidential Commission Against Graft and Corruption (PCAGC) against Commissioner Guillermo L. Parayno, Jr., of the Bureau of Customs for the following acts or omissions:

1. Knowingly violating Section 3, paragraph (e) of RA 3019 in relation to Section 12 of Joint Order No. 1-91 for the release of 15,000 MT of imported raw sugar without the required SGS Clean Report of Findings (CRF) resulting in the loss of revenue to the government in the amount of P 42 million thereby causing undue injury to the government while giving unwarranted benefits to importer New Frontier Sugar Corporation;

2. Violating CAO 4-93, Section 5 (actually CAO 5-93) for the release of imported sugar that has been considered abandoned under the law;

3. Falsification of documents for enclosing in a memorandum for the release of imported sugar a spurious CRF;

4. Violation of Article 171, paragraphs 3 and 4 of the Revised Penal Code and RA 6713, Section 4, paragraph C by sending letters to Senators Juan Ponce Enrile and Ernesto Maceda knowing fully well the contents thereof were all packed with lies;

5. Violation of Article 220 of the Revised Penal Code or the illegal use of public funs or property, in relation to Sections 2601 and 2605 of the Tariff and Customs Code of the Philippines (TCCP) by appropriating forfeited air conditioning units for the use of the Bureau of Customs (BOC);

6. Violation of Sections 1206, 1207, 1405, 1601, 1602, 1603, 2308, 2309, 3301 and 3302 of the TCCP on the basis of the copy of the letter of the Customs United Reformist Employees Association, Inc. (CURE)

After a careful perusal of the records of the case and a cursory reading of the applicable rules and regulations, it is apparent that the allegations/arguments of complainant have no factual and legal bases.

I. There is no question that the rules allow the tentative release of shipments arriving in the country without CRF, specifically under Section 13 of Joint Order No. 1-91, which provides that shipments effected without the required pre-shipment inspection shall be referred to the Bureau of Customs-SGS Import Valuation and Classification Committee (Appeals Committee) which shall ascertain whether or not the same shall be recommended to the Collector of the issuance of WSD.

Thereafter, several Customs Memorandum Orders (CMOs) relating to shipments without CRF were issued pursuant to said Section 13. First was CMO 51-92 issued by then Commissioner Tomas Apacible which allowed the tentative release of shipments without CRF under more stringent conditions. The aforementioned CMOs are effective up to the present as the validity or legality thereof was never assailed or questioned before any appropriate body or forum.

It has been established that thousands of shipments which arrive in the country without CRF are allowed to be tentatively released under existing customs regulations but subject sugar shipment can be singled out as one with the most stringent conditions imposed by the Commissioner on top of those of the Collector of Customs to better protect the interest of the government, to wit:

1. Payment of full duty including tax (if any) based on the dutiable value indicated in the attached CRF which was issued by the SGS following the destination inspection mandated under DMO 9-95;

2. Payment of 20% penalty of the landed cost for failure to undergo the pre-shipment inspection at the port of exportation; and

3. Posting of a bank guarantee in the amount of 120% of the landed cost pending the resolution of the abovementioned issues to serve as a guarantee in the event the resolution of the case is against the importer.

It should be stressed further that New Frontier had already paid the advance duties in the amount of P 64,315,388.00 on 05 October 1996 or four (4) months prior to its tentative release. Additional duties of P 4,763,107.00 were paid after issuance of destination CRF. The duties and taxes collected were computed per SGS value of $353.364 per metric ton as against invoice value of $309.00 per MT FOB as reflected in the invoice (Exh. B).

The importer also posted a bank guarantee in the form of a post-dated check in the amount of P 234,998,950.90 dated 09 February 1996 equivalent to 120% of the landed cost of the shipment which the government can forfeit in lieu of the goods itself should the decision of the hearing body tasked to ascertain whether or not the arrival of the shipment in the country without CRF is intentional. Lastly, the Court of Tax Appeals required the importer to post a GSIS bond with a face value of P 83,717,100.00 to guarantee the payment of the penalty which amounted

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to P 41.9 million.

Eventually, the Customs hearing body created under Customs Special Order NO. D-03-96 ruled that the lack of CRF at the time of arrival was not intentional. It is worthy to emphasize, however, at this juncture that the three-man hearing body committed a typographical error in their decision that the invoice value of the shipment is $629.00 per metric ton. The invoice value as shown in Exhibit B is $309.00 per MT FOB, for which reason the Respondent correctly and accurately argued that the SGS value is higher than the invoice value of the shipment.

It is clear, therefore, that there was no violation of Section 3 (e) of RA 3019 was committed as the tentative release of the sugar did not cause any injury to the government. On the contrary, the interest of the government was well protected and its national economic policies in terms of encouraging trade and maintaining revenue collection have even been promoted. Neither has any private party including the complainant been caused and injury. Furthermore, no unwarranted benefit was given to the importer as the sugar was released under more stringent conditions than any other importation that has complied with the requirements of CMO 9-95.

More importantly, it was convincingly shown that while the shipment arrived in the country lacking the required CRF, it was not released until after the requisite CRF No. THL-017904 was issued by SGS on 18 January 1996 under the procedure outlined and terms and conditions prescribed by CMO 9-95, specifically: (a) One hundred percent (100%) examination in the presence of representatives from SGS and the concerned local industry (if any); (b) Payment of a CISS Inspection fee to the Bureau of Customs; (c) Submission of a copy of the Importer's Referral/Information Sheet, letter to SGS, Examination Findings and all representative samples of entry subject articles to SSGS-MLO for transmittal to the SGS affiliate concerned for the issuance of the requisite CRF.

II. The Customs Commissioner cannot be said to have violated CAO 5-93 because the matter of whether or not he entry was filed within the 30-day period from the date of last discharge was not brought to his attention. The responsibility rests upon the Collector of Customs. Precisely, it was Collector Jesus Pepito who extended the period within which to file the Entry and who approved the filing of the entry on 27 December 1996 and his action not to declare ABANDONMENT but instead allow entry to be filed was arrived at under the following circumstances:

1. One day after the shipment arrived in Iloilo on 05 October 1995, the importer filed an Import Entry Declaration (IED), a required document for opening Letters of Credit and paid advance duty of P64,315,388.00;

2. On the same day, the importer filed a Special Permit for the transfer of the goods from the port to the consignee's bodega for lack of storage facility in the port;

3. The Sugar Regulatory Commission as early as 19 October 1995 issued a CLEARANCE for the release of the shipment after payment by the importer of the following:

AGENCY AMOUNT O.R. NO. DATE

SRA 675,210.00 00726 19 Oct. 1995

SIFI 1,425,000.00 02130 19 Oct. 1995

PSMA 210,000.00 00936 19 Oct. 1995

Total 2,310,210.00

The Collector explained that there could be no implied abandonment in this case because the importer filed several documents for the release of the shipment and paid all duties and charges thereon. In Rodriguez vs. Court of Appeals, 248 SCRA 288, the Supreme Court ruled that filing of Import Entry and Internal Revenue Declaration

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(IEIRD) is not the determinant of implied abandonment. That even the filing of a Special Transfer which has as a condition the payment of duties and taxes, constitutes filing of entry in contemplation of law.

The tentative release of the shipment pursuant to CMO 9-95 was made by Respondent upon the recommendation of the Chief, FED at the Port of Iloilo on 29 December 1995 and by the District Collector of Customs on 15 January 1996. Clearly therefore, contrary to the findings of the PCAGC that it was Respondent who persuaded Collector Jesus Pepito to release subject shipment, Respondent merely affirmed the recommendation of the aforestated customs officials.

III. The allegation of complainant that Respondent committed falsification of documents for enclosing a spurious CRF is belied by Mr. David Robinson of SGS in his letter dated 06 December 1996, wherein he confirmed the existence and issuance of the Advance CRF by their office to respondent on 17 January 1996 and the subsequent issuance of the CRF itself on 18 January 1996.

IV. The allegations of complainant for violation of Article 171 paragraphs 3 and 4 of the Revised Penal Code and RA 6713, Section 4 paragraph (c) by sending letters to Senators Juan Ponce Enrile and Ernesto Maceda are wanting in clear and direct evidence that would support this particular charge against Respondent.

V. As succinctly explained by Respondent, the subject air conditioning units were legally acquired by the Bureau of Customs from the programmed equipment outlays with prior clearance from the Secretary of Finance dated 18 May 1995, pursuant to General Appropriations Act in addition to the provisions of the Tariff and Customs Code. Special Provision No. 1 in the General Appropriation Act for CY 1995 provides that:

> "1. Disposition of Forfeited Transport Equipment and Other Articles. Motor transport equipment and other articles forfeited or abandoned in favor of the government may be disposed of by the Department of Finance, upon the recommendation of the Commissioner of Customs for the use of any government agency in socio-economic projects: PROVIDED, That the recipient government agency shall pay for the value of such equipment or articles out of its programmed equipment outlays, and the amount received shall be recorded by the Bureau of Customs as income accruing to the General Fund, subject to auditing rules and regulations."

The required payment has been completed by the Bureau. Hence, the alleged violation of Article 220 of the Revised Penal Code (illegal use of public funds) alluded to by Complainant has no leg to stand on.

Significantly in Prieto vs. Cariaga, 242 SCRA 320, the Supreme Court ruled that the common element which will make the offender fall within paragraph 3(3) of RA 3019 is his intent to gain, to obtain pecuniary advantage or enrich himself materially while discharging his official duties. Said element is conspicuously absent in this case.

WHEREFORE, premises considered, the recommendation of the Presidential Commission Against Graft and Corruption against him is hereby dismissed for lack of merit.

SO ORDERED.

Adopted: 29 May 1998

By Authority of the President:

(SGD.) RENATO C. CORONA
Chief Presidential Legal Counsel/
Deputy Executive Secretary

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