

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

ADMINISTRATIVE DECISION

Attached is the Resolution issued on May 29, 1998 in O.P. Case No. 98-F8405 entitled Atty. Quirino A. Marquez 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. MARQUEZ,

Complainant,

versus-

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

GUILLERMO L. PARAYNO, JR.,

Respondent.

X-----X

RESOLUTION

This administrative investigation stemmed from an affidavit-complaint filed by Atty. Quirino A. Marquez 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 funds 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 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