REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

OILINK INTERNATIONAL CORPORATION,
Petitioner,

versus

C.T.A. CASE NO. 5918

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated

JUL 09 2001

x - x

DECISION

The case at bar seeks the nullification and review of the assessment issued by the Respondent demanding from the Petitioner the payment of the amount of P138,060,200.49 allegedly representing the latter's deficiency duties and taxes from its oil imports for the years 1991 to 1995.

As represented, Petitioner is a corporation duly existing by virtue of the laws of the Philippines with principal office address at Mariveles, Province of Bataan.

On September 15, 1966, Union Refinery Corporation (URC) was established pursuant to the Corporation Code of the Philippines. In the course of its business undertakings, particularly within the period of 1991 to 1994, it imported species of oil products to supply the fuel requirements of various companies in the Philippines.

On January 11, 1996, Petitioner Oilink International Corporation (Oilink or OIC, for brevity) was incorporated primarily for the purpose of manufacturing, importing, exporting, buying, selling or otherwise dealing in, at wholesale and retail of petroleum, oil, gas and of any and all refinements and by-products thereof. URC and Oilink had interlocking directors at the time when the latter started its undertaking as a business entity.

In applying for and in expediting the transfer of the operator's name for the Customs Bonded Warehouse (CBW) operated by URC, a letter dated January 15, 1996 was sent by Ms. Esther Magleo, then Vice President and General Manager of URC, manifesting that URC and Oilink have the same board of directors and that Oilink is 100% owned by URC.

On March 4, 1998, District Collector of the Port of Manila Oscar Brillo sent a demand letter to URC requiring it to pay a tax assessment of (PhP) 295,583,329.10 representing URC's taxes and duties for its oil imports which arrived at the Port of Lucanin, Mariveles, Bataan, sometime between January 6, 1991 and November 7, 1995 (Annex "C" of the Petition for Review).

On April 16, 1998, District Collector Oscar Brillo sent another demand letter to URC obliging it now to pay the reduced amount of (PhP) 289,287,486.60 for alleged non-payment of the value added tax, special duties and taxes and excise taxes for the years 1991-1995 (Annex "D" of the Petition for Review).

On April 23, 1998, Atty. Gustilo, then counsel for URC, in response to the letter of demand, sought for the landed computations of the tax assessments and challenged the inconsistencies therein (Annex "E" of the Petition for Review).

On November 25, 1998, then Customs Commissioner Pedro C. Mendoza sent a demand letter to URC, directing the latter to pay the amount of P119,223,541.71 representing URC's Special duty, VAT and Excise Tax which it failed to pay at the time of the release of its 17 oil shipments which arrived in the Sub-port of Mariveles from January 1, 1991 to September 7, 1995 (Annex "G" of the Petition for Review).

On December 21, 1998, then Customs Commissioner Mendoza sent another demand letter to URC requiring it to pay deficiency taxes in the reduced amount anew of (PhP) 99,216,580.10 (Annex "H" of the Petition for Review).

On December 23, 1998, immediately upon his assumption of office, Customs Commissioner Nelson Tan sent another demand letter to URC affirming the assessment of Commissioner Mendoza in the amount of (PhP) 99,216,580.10.

On January 18, 1999, Ms. Esther Magleo, then still a member of URC, sent a letter to Commissioner Tan denying the liability and insisted that only (PhP) 28,933,079.20 be paid as a compromise payment.

On March 26, 1999, Commissioner Tan wrote URC a letter denying the proposal of Ms. Magleo and directed URC to pay (PhP) 99,216,580.00.

On May 24, 1999, URC President Manuel Co wrote another letter to the Respondent agreeing to pay the total sum of (PhP) 94,216,580.00 with the initial amount of (PhP) 28,264,974.00 to be taken from the collectibles of Oilink from NPC, the remaining balance to be paid in monthly installments for a period of three (3) years with corresponding post-dated checks as security and other available tax credits in the future (Annex "I" of the Petition for Review).

On July 2, 1999, Commissioner Tan sent a FINAL LETTER OF DEMAND addressed to URC and Petitioner OILINK stating that the total liability amounted to (PhP) 138,060,200.49 (Annex "A" of the Petition for Review). The letter received by the Petitioner on July 4, 1999 is quoted hereunder:

"02 July 1999

Manuel Co
President
Union Refinery Corp./
Oilink Int'l. Corp.
2445 Pedro Gil St.,
Sta. Ana, Metro Manila

Dear Mr. Co,

A review of the documents covering the importation of Union Refinery Corporation (URC) from 1991 to 1995 conducted by the CIIS with the assistance of the Customs Appraisers has established that the amount of (PhP) 99,216,580.00 which you were directed to pay in our demand letter dated 26 March 1999 should be (PhP) 93,411,862.10 after the necessary correction of the amounts collectible against the payment is made.

It was also established that your shipments are subject to additional VAT and Special Duty in the amount of (PhP) 12,872,468.32 and (PhP) 537,747.00 respectively or a total of (PhP) 13,410,218.32.

Likewise, the shipment of 4,693,937 MT base oil ex M/V "Jian She" No. 8, which was inadvertently included in the tax liability of Union Global Trading (UGT) is actually your shipment. Based on the recomputation, said shipment has additional tax deficiency of PhP 2,839,829.00 for additional VAT; PhP 5,163,320.00 for additional Special Duty and PhP 23,234,968.00 for additional Excise Tax or a total of PhP 31,238,123.00.

Based on the above findings, your tax liability increased to PhP 138,060,200.49 as shown in the attached tabulation. This adjusted amount does not include the tax deficiency of your company which maybe uncovered by the BIR as collectible after its ongoing review of the documents covering the shipments is completed.

You are therefore directed to pay the preliminary assessment of P138,060,200.49 within ten (10) days from receipt hereof, otherwise we will take appropriate legal action against your company and the officials involved.

Please consider this letter as our final demand.

Very truly yours,

NELSON TAN
Acting Commissioner"

On July 12, 1999, URC sent a letter protesting the preliminary assessment, asking the Respondent to give the bases of its computation and the source/s thereof (Annex "K" of the Petition for Review).

On July 15, 1999, Petitioner Oilink similarly sent a letter protesting the assessment not being the proper party liable for the assessed deficiency taxes. Additionally, Petitioner sought the immediate issuance of a tax clearance from the public Respondent since its collectibles from the NPC were unnecessarily being held as NPC rode on the representations of the Respondent that Oilink is liable for URC's alleged tax liability, the two companies being one and the same (Annex "L" of the Petition for Review).

On July 12, 1999, in response to the protests by URC and Oilink, Respondent sent another letter dictating its impositions styled as follows:

"July 12, 1999

Mr. Manuel Co
President
Union Refinery Corporation - OILINK
2445 Pedro Gil St., Sta. Ana
Metro Manila

Dear Mr. Co:

We refer to your letter dated 08 July 1999 in response to our July 2, 1999 demand letter for your company to settle the amount of PHP 138,060,200.49 representing deficiency in duties and taxes in your oil imports as has been adjusted.

In reply to your request for particulars, attached please find the detailed computation as to how the above figure was arrived at.

Meanwhile, we are furnishing you a copy of our self-explanatory letter to NPC President Federico Puno indicating our position on NPC's proposed disposition of OILINK's claim against NPC in relation to BOC's demand against URC/OILINK. May we stress that BOC will not issue any clearance to OILINK unless the demanded the (sic) amount of P138,060,200.49 is first paid and that a performance bond be posted by URC/OILINK to secure payment of any adjustments resulting from the BIR review on VAT, excise Tax, Special duties, etc., has been made.

Finally, please be advised that the 10-day period given to your Office to comply with BOC's demand is set to expire tomorrow.

Please give the matter your preferential attention.

Thank you.

Very truly yours,

NELSON TAN
Acting Commissioner"

Marking his July 2, 1999 and July 12, 1999 letter to be FINAL, Petitioner on July 30, 1999 instituted this appeal to nullify the shifting of the tax imposition for having been issued without authority and with grave abuse of discretion tantamount to lack of jurisdiction.

It is the principal submission of Petitioner that Respondent Commissioner of Customs gravely erred and committed a grave abuse of discretion when he shifted the tax liabilities of URC to herein Petitioner knowing for a fact that its personality is separate and distinct from URC. It claimed that the Respondent cannot expediently pierce the veil of corporate fiction by capitalizing heavily on the representation of Ms. Esther Magleo that Petitioner is 100% owned by URC with common directors. Petitioner likewise stated that in the absence of any allegation of fraud committed by URC showing that Petitioner was used as a device to evade the payment of the tax nor to shield URC from performing an alleged obligation to pay, the Commissioner cannot lawfully pierce the veil of corporate fiction. It asseverated that URC is not in the process of dissolution as its business affairs are still in existence and is in fact contesting the assessment before this Court in the case entitled Union Refinery Corporation vs. Commissioner of Customs, CTA Case No. 5917.

Furthermore, Petitioner argued that the assessment by Respondent Commissioner of Customs involving internal revenue taxes, i.e. VAT and excise taxes, is void for want of authority to do so taking into account that the imported articles have already been released and parted from the custody of the Bureau of Customs. It said that only the

Commissioner of Internal Revenue has the sole authority to assess taxes collectible under the Tax Code once the goods subject of the tax have left the Customs' custody.

Moreover, Petitioner said that assuming for the sake of argument that the Respondent could pierce the corporate personality of Petitioner OILINK, still, the enforcement of the assessment could not be availed of having been done beyond the prescriptive period provided for in Section 1603 of the Tariff and Customs Code of the Philippines (TCCP).

Finally, Petitioner argued that the assessment is void for having failed to provide the necessary bases upon which the computation was reached. Thus, it prayed that the assailed assessment issued by the Respondent against herein Petitioner be struck down and declared null and void and that Petitioner be declared not liable to pay the said final assessment rendered by the Respondent.

On the other hand, Respondent contended that there exists a legal basis for him to pierce the veil of corporate fiction of URC and herein Petitioner OILINK, and that the Bureau of Customs validly acted in demanding payment from Petitioner OILINK with respect to the deficiency taxes incurred by URC. He articulated that the conditions under which the juridical entity may be disregarded vary according to the peculiar facts and circumstances of each case. Respondent asserts that there is no hard and fast rule that can be accurately laid down, but there are certainly some probative factors of identity that will justify the application of the doctrine of piercing the veil of corporate entity in the case at bar, namely:

1. Stock ownership by one or common ownership of both corporations;

2. Identity of directors and officers;

3. The manner of keeping corporate books and records; and

4. Method of conducting business. (cf Lopez the Corporation Code of the Philippines, Vol. I, 1994 p. 19, citing 4 MINNL. Rev. pp. 219-227)

Respondent stated that in the case under consideration, it is admitted that OILINK is 100% owned by URC, that OILINK and URC have interlocking directors and that the stockholders and board of directors of the two corporations are the same (par. III, Nos. 3.02 and 3.03, p. 5 and Annex B, Petition). Furthermore, Respondent asseverated the following circumstances to show that URC manifested its identity and union with herein Petitioner OILINK:

> 1. Thus, in a letter dated 12 May 1998 addressed to the Commissioner of Customs, one of the documents submitted by URC as proof of payment of deficiency tax is BOC-OR No. 59865531 in the amount of PHP 16,612,439.00 in the name of OILINK issued on 12 March 1997 for duty, VAT and excise tax for the importation of 16,993.7 BPLS dual purpose kerosene ex S/S "Ocean Progress," covered by Import Entry No. 065-96.
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> 2. Likewise on 04 May 1998, in a meeting attended by Mr. Paul Co and Esther Magleo of URC and their counsel, Atty. Francis Gustilo, at the Bureau of Customs (BOC), the latter presented a photocopy of an acknowledgment receipt which contains the list of the original copies of consumption entries, together with official receipts of shipments of both URC and OILINK from 1991 to 1995. For these importations (1991 to 1995), URC was found liable for tax deficiency in the amount of PHP 119,223,541.71.
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> 3. In August 1998, URC asked the BOC that certain amount be deducted from the above-mentioned tax deficiency, one of which is the amount of PHP 4,177,063.00 representing the excess payment of duties and

taxes on OILINK's five (5) importations which were assessed based on higher rate of exchange.

4. Another amount which URC sought to be deducted from its tax deficiency is the sum of PHP 16,612,439.00 covered by BOC-OR No. 59865531 which OILINK paid for Philippine Airlines (PAL) importation of JET A-1 fuel.

5. Subsequently, on 24 May 1999, Mr. Manuel Co, President of URC wrote the Respondent Commissioner Tan proposing to settle its tax obligation, as follows:

x x x

> "a) URC to advance from OILINK International Corporation (OIC) receivable from NAPOCOR, the amount of P28,264,974.00 to pay the Bureau of Customs (BOC) 30% of its total obligations.
>
> b) The balance to be paid in monthly installments for a period of three (3) years with corresponding company post dated checks as security and other available tax credits in the future." (Annex "L", Petition)

Respondent argued that the foregoing are clear indications that the Petitioner and URC are one and the same corporate entity, the former being completely controlled and used as a business conduit of the latter. Moreover, he said that, it was not the Respondent Commissioner who pierced the veil of corporate fiction of the two corporations and it was URC itself which brought OILINK into the instant controversy. It was URC itself which lifted the corporate mask of OILINK. Finally, it was URC itself which treated OILINK as its mere alter ego.

Besides, Respondent said that the corporate veil of URC and OILINK may be pierced in the controversy at bar since badges of fraud exist. The notion of corporate fiction must be disregarded since it is being used to defeat public convenience and interest, i.e. collection of the appropriate excise taxes, VAT and special duties. And, it would be extremely anomalous to allow the Petitioner to invoke the doctrine of corporate entity in order to free itself from any obligation regarding the payment of tax deficiency of URC while in the same vein allowing itself to be used by URC in order to absolve the latter from the payment of its tax deficiency with the government. Certainly, under this prevailing situation, the Respondent Commissioner of Customs has every right and legal basis to "pierce the veil of corporate fiction of both corporations." Consequently, the assessment and/or tax deficiency of URC becomes also the assessment or tax deficiency of the Petitioner OILINK.

Likewise, Respondent said that the Commissioner of Customs has the authority to make assessments of internal revenue taxes imposable by reason of the importation of goods and merchandise. The mere fact that the articles are no longer in the custody of the BOC is inconsequential because, technically speaking, the importation of said articles is not yet deemed terminated by reason of the non-payment of the appropriate duties, taxes and other charges due therefrom. Appropriately, Section 1202 of the TCCP reads:

> "**Section 1202.** ***When Importation Begins and Deemed Terminated.*** - Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with the 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 the 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 customs."

Respondent also argued that the assessment made by the Bureau of Customs is valid and legal even if the supporting documents were not appended to the assessment and that the one-year prescriptive period under Section 1603 of the TCCP had not yet set in on the assessment of the Bureau of Customs (pp. 25 to 27, Answer).

Finally, Respondent contends that this Court has no jurisdiction over the subject matter of the instant petition on the ground that the final demand letter dated July 2, 1999 of Commissioner Tan (Exhibit R) is not the "ruling" or "decision" being contemplated by either Section 2402 of the TCCP, or Section 7(2) of RA 1125 (The Law Creating the Court of Tax Appeals). He said that the phrase "decision of the Commissioner of Customs" in paragraph (2) Section 7 of RA 1125 refers to the Commissioner's ruling in the protest cases or seizure cases that are brought before him on appeal or through automatic review pursuant to Section 2313 of the TCCP. Thus, he concluded that since the demand of the Commissioner for the payment of the tax deficiency or liability of URC/OILINK did not arise from or is related to any protest or seizure, the same does not fall within the jurisdiction of the Court of Tax Appeals.

As jointly stipulated by the parties, the following issues are to be resolved by this Court.

1. Whether or not there exists legal basis for the Respondent to "pierce the veil of corporate fiction" of Petitioner and URC; as a consequence thereof, the assessment against URC became an assessment also against Petitioner.

2. Whether or not this Honorable Court has jurisdiction over the subject matter of the petition.

3. Whether or not Petitioner has a cause of action against Respondent.

The Court rules the first issue in the negative.

A corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be related. While not in fact and in reality a person, the law treats the corporation as though it were a person by process of fiction or by regarding it as an artificial person distinct and separate from its individual stockholders and other legal entities to which it may be connected. However, when valid grounds exist, such as when the corporate fiction is shown to be used to defeat public convenience, justify wrong, protect fraud or defend crime or where a corporation is the mere alter ego or business conduit of a person or another corporation, the legal fiction that a corporation is an entity with a juridical personality separate from its stockholders and from other corporations may be disregarded. In the absence of such grounds, the corporations are to be rightly treated as distinct and separate from each other. In order to disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established.

In the case at bar, the said wrongdoing was not clearly and convincingly established by Respondent. He did not submit any evidence to support his allegations but merely submitted the case for decision based on the pleadings and evidence presented by Petitioner. Stated otherwise, should the Respondent sufficiently prove that OILINK was merely set up in order to avoid the payment of taxes or for some other purpose which will defeat public convenience, justify wrong, protect fraud or defend crime, this Court shall not hesitate to pierce the veil of corporate fiction of URC and OILINK.

Moreover, this Court is in total acquiescence with Petitioner's ratiocination, that the Respondent Commissioner cannot lawfully pierce the veil of corporate fiction in the absence of any allegation of fraud committed by URC showing that Oilink was used as a device to evade the payment of the tax nor to shield URC from performing an alleged obligation to pay. Pertinently, the fraud contemplated by law must be actual and not constructive of an intentional nature consisting of deception willfully and deliberately done **(Farolan vs. Court of Tax Appeals, 217 SCRA 298).** Differently stated, the intention to minimize taxes, when used in the context of fraud, must be proved to exist by clear and convincing evidence amounting to more than mere preponderance and cannot be justified by mere speculation for fraud is not presumed **(Yutivo Sons Hardware Co. vs. Court of Tax Appeals, 1 SCRA 160).** Further, there must be showing of how the conduit corporation was used to perpetrate a fraud. In this regard, the leading case of **Yutivo Sons Hardware Co. vs. Court of Tax Appeals** positively demonstrates why even with common directors and commonality of ownership, the veil of corporate fiction cannot just be summarily invoked. Neither could it be stated that the creation of Petitioner Oilink was devised to evade the payment of a tax, when there is no showing that URC has absconded in its obligation as in fact it is still contesting the assessment. Parenthetically, URC is not in the process of dissolution as its business affairs are still in existence. There is no rhyme or reason for the Respondent to visualize that Oilink was created for URC to escape payment of an obligation when the business interest and purposes of the corporations are miles apart from each other. As held in Yutivo:

> "After going over the voluminous record of the present case, we are inclined to rule that the Court of Tax Appeals was not justified in finding that SM was organized for no other purpose than to defraud the Government of its lawful revenues. In the first place, this corporation was organized in June, 1946 when it could not have caused Yutivo any tax savings. From that date up to June 30, 1947, or a period of more than one year, GM was the importer of the cars and trucks sold to Yutivo, which, in turn resold them to SM. During that period, it is not disputed that GM, as importer, was the one solely liable for sales taxes. Neither Yutivo or SM was subject to the sales taxes on their sales of cars and trucks. The sales tax liability of Yutivo did not arise until July 1, 1947 when it became the importer and simply continued its practice of selling to SM. The decision, therefore, of the Tax Court that SM was organized purposely as a tax evasion device runs counter to the fact that there was no tax to evade."

The doctrine in Yutivo was reiterated in contemporary jurisprudence. Hence, in **Traders Royal Bank vs. Court of Appeals (269 SCRA 15),** the Supreme Arbiter declared with equal vigor the unavailability of piercing the veil of corporate fiction without the required proof that it was misused to such extent that injustice, fraud, or crime was committed upon another. Witnesseth:

> "Petitioner cannot put up the excuse of piercing the veil of corporate entity as this is merely an equitable remedy and may be awarded only in cases when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime, or where a corporation is a mere alter ego or business conduit of a person.
>
> Piercing the veil of corporate entity requires the court to see through the protective shroud which exempts its stockholders from liabilities that ordinarily, they could be subject to, or distinguishes one corporation from a seemingly separate one, were it not for the existing corporate fiction. But to do this, the Court must be sure that the corporate fiction was misused, to such

an extent that injustice, fraud or crime was committed upon another, disregarding, thus his, her or its rights. It is the protection of the interests of innocent third persons dealing with the corporate entity which the law aims to protect by this doctrine."

Neither is the fact of commonality of shareholdings a basis to pierce the veil of corporate fiction just to accommodate the thirst of the Respondent to collect taxes from another entity, ergo:

"Though it is true that when valid reasons exist, the legal fiction that a corporation is an entity with a juridical personality separate from its stockholders and from other corporations may be disregarded, in the absence of such grounds, the general rule must be upheld. The fact that Philfinance owns majority shares in Filriters is not by itself a ground to disregard the independent corporate status of Filriters. In Liddel & Co., Inc. vs. Collector of Internal Revenue, the mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself a sufficient reason for disregarding the fiction of separate corporate personalities." (Traders Royal Bank vs. Court of Appeals, *supra*)

Taxes are personal to the taxpayer. A corporation's tax delinquency cannot just be passed to any person even unto its stockholders because taxes are personal in nature not to mention that a corporation is vested by law with a personality that is separate and distinct from those persons comprising it, as well as from that of any other legal entity to which it may be related. The dictum in **Sunio vs. NLRC (127 SCRA 390)** is definitely consistent with the above admonitions of the High Court:

"It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital

> stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality."

With regard to the second and third issues the Court rules the same in the affirmative. This court has jurisdiction over the subject matter of the instant petition and that Petitioner has a cause of action in filing the instant petition.

Republic Act No. 1125 which created the Court of Tax Appeals provides in Section 7 thereof:

> "**Section 7.** ***Jurisdiction.*** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:
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> 1. x x x
>
> 2. Decisions of the Commissioner of Customs in cases involving liability for Customs duties, fees or other money charges; seizure, detention or release of property affected; fines forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs;

The records show that there was a final decision rendered by Respondent Commissioner dated July 2, 1999 (Annex "A" of the Petition for Review) involving the disputed assessment, hence, the instant petition falls within the jurisdiction of this Court and as such gives the Petitioner the right to file the instant petition with this Court pursuant to the aforequoted Section 7(2) of R.A. 1125.

IN THE LIGHT OF ALL THE FOREGOING, the petition is hereby **GRANTED**. The assailed assessment issued by Respondent against herein Petitioner OILINK INTERNATIONAL CORPORATION is hereby declared **NULL** and **VOID.**

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge