REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. CASE NO. 6485

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JUN 19 2008 2:30 p

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DECISION

CASANOVA, *J.*:

Before the Court is petitioner's Petition for Review praying for the following:

(1) the respondent's Letters dated July 27, 2000, September 4, 2000, October 29, 2001 and December 28, 2001 be declared devoid of legal and factual basis, and respondent and his subordinates be ordered to withdraw the same; and

(2) respondent and his agents be enjoined from any and all attempts to collect from petitioner the assessment in the amount of Nine Hundred Thirty Six Million Eight Hundred Ninety Nine Thousand Eight Hundred Eighty Three Pesos and 90/100 (P936,899,883.90) representing the dutiable value of petitioner's importation of crude oil covered by Import Entry No. 683-96.

Petitioner is a corporation duly organized and existing under and by virtue of the Philippine laws, with address at the Shell House, 156 Valero Street, Salcedo Village, Makati City.[1]

Respondent heads the Bureau of Customs ("BOC"), the government agency tasked with the function of assessing and collecting duties, fees and other charges under the Tariff and Customs Code of the Philippines ("TCCP") and the enforcement of the TCCP, and related laws, rules, and regulations.[2]

Petitioner is engaged in the business of marketing petroleum products which it refines from crude oil.[3]

On April 7, 1996, petitioner's importation of 1,979,674.85 U.S. barrels of Arab Light Crude Oil thru the *Ex MT Lanistels* arrived.[4]

Three days after the arrival of its importation, petitioner unloaded the shipment from the carrying vessels docked at a wharf owned and operated by petitioner to its oil tanks located at Batangas City.[5]

On April 16, 1996, Republic Act ("R.A.") 8180, otherwise known as the Downstream Oil Industry Deregulation Act of 1996, took effect and provided for the reduction of the tariff duty on imported crude oil from 10% to 3%.

On August 1, 2000, petitioner received from the BOC, through the District Collector of Batangas, a demand letter dated July 27, 2000 for it to pay the deficiency customs duties in the amount of P120,162,991.00 due from its importation covered by Entry Nos. 683-96, 530-96, and 531-96.[6]

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[1] Par. 1 of the Admitted Facts; docket, p. 608.
[2] Par. 2 of the Admitted Facts; *ibid.*
[3] Par. 3 of the Admitted Facts; *ibid.*
[4] Par. 4 of the Admitted Facts; *ibid.*, p. 609.
[5] Par. 5 of the Admitted Facts; *ibid.*
[6] Par. 7 of the Admitted Facts; *ibid.* See also Exhibit A; docket, p. 48.

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On August 14, 2000, petitioner wrote respondent protesting the assessment for deficiency customs duties.[7]

On September 4, 2000, the BOC District Collector wrote petitioner demanding for the payment of the deficiency customs duties.[8]

On October 11, 2000, petitioner appealed the September 4, 2000 decision of the BOC District Collector to the respondent and requested for the cancellation of the assessment for deficiency customs duties.[9]

On October 29, 2001, petitioner received by telefax from the respondent a demand letter for the payment of the amount of P936,899,885.90, representing the dutiable value of its 1996 crude oil importation which had been abandoned in favor of the government by operation of law. Respondent stated that the Import Entry No. 683-96 covering the importation had been irregularly filed and accepted beyond the thirty-day period required by law.[10]

On November 7, 2001, petitioner wrote respondent protesting the demand letter for lack of factual and legal basis, and has already prescribed.[11]

On December 3, 2001, petitioner wrote the BOC Director of Legal Service, seeking clarification as to what course of action the BOC is taking; while reiterating its position that the respondent's demand letters dated October 29, 2001 and July 27, 2000 have no legal basis.[12]

On December 28, 2001, BOC Deputy Commissioner Gil A. Valera sent petitioner a letter stating that petitioner had not responded to the respondent's

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[7] Par. 8 of the Admitted Facts; *ibid.* See also Exhibit B; docket, pp. 49-53.
[8] Par. 9 of the Admitted Facts; *ibid.* See also Exhibit C; docket, pp. 54-55.
[9] Par. 10 of the Admitted Facts; *ibid.* See also Exhibit D; docket, pp. 56-61.
[10] Par. 11 of the Admitted Facts; *ibid.* See also Exhibit E and Exhibit 3; docket, p. 62.
[11] Par. 12 of the Admitted Facts; *ibid.* See also Exhibit F and Exhibit 4; docket, pp. 63-65.
[12] Par. 13 of the Admitted Facts; *ibid.* See also Exhibit G and Exhibit 5; docket, pp. 66-67.

October 29, 2001 demand letter and demanding for the payment of P936,899,885.90. In case of non-payment, he shall enforce Section 1508 of the Tariff and Customs Code of the Philippines ("TCCP"), and file a civil complaint against petitioner.[13]

On April 11, 2002, the BOC filed a civil case for collection of a sum of money against petitioner and Caltex Philippines, Inc. (entitled *"Bureau of Customs vs. Pilipinas Shell Petroleum Corp. and Caltex Philippines, Inc."*, docketed as Civil Case No. 02103239) before the Regional Trial Court, Branch XXV, of Manila).[14]

On May 27, 2002, petitioner filed before this Court the present Petition for Review.[15]

On August 2, 2002, respondent filed a *"Motion to Dismiss"* raising lack of cause of action and jurisdiction as grounds.[16]

After petitioner filed its *"Opposition to Motion to Dismiss"*[17] and *"Memorandum in Support of Opposition to Motion to Dismiss"*[18] on September 19, 2002, and October 21, 2002, respectively; and respondent's *"Memorandum"*[19] on October 21, 2002, this Court issued a Resolution on January 17, 2003 denying respondent's Motion.[20]

Respondent filed a *"Motion for Reconsideration"* on February 14, 2003;[21] and petitioner filed an *"Opposition to Motion For Reconsideration"* on March 27, 2003.[22]

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[13] Par. 14 of the Admitted Facts; *ibid.* See also Exhibit H and Exhibit 6; docket, p. 68.
[14] Exhibit J-1 and Exhibit 8-1; *ibid.*, pp. 21-27.
[15] Docket, pp. 1- 16.
[16] Docket, pp. 84- 102.
[17] Docket, pp. 108-111.
[18] Docket, pp. 113-117.
[19] Docket, pp. 118-145.
[20] Docket, pp. 147-155.
[21] Docket, pp. 157- 171.
[22] Docket, pp. 188-195.

On June 16, 2003, this Court issued a Resolution denying the said Motion for lack of merit.[23]

On August 13, 2003, respondent, through the Office of the Solicitor General, filed before the Court of Appeals a *"Petition for Certiorari and Prohibition With Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction"* (docketed as CA-G.R. SP No. 78563). He prays for the reversal and setting aside of this Court's January 17, 2003 and June 16, 2003 Resolutions.[24]

Meanwhile, respondent filed his *Answer* to the present Petition on October 20, 2003; and alleged prescription, and lack of cause of action as affirmative defenses.[25]

Trial proceeded. Petitioner presented its testimonial and documentary evidence; while respondent did not present testimonial evidence as there was no factual issues involved in the case.[26]

On February 15, 2007, the First Division of the Court of Appeals rendered a Decision in CA-G.R. SP No. 78563 dismissing respondent's *Petition*.[27]

On July 24, 2007, the Former First Division of the Court of Appeals issued a Resolution in CA-G.R. SP No. 78563 denying respondent's *"Motion for Reconsideration"*.[28]

Both parties agreed to submit the following issues for this Court's resolution:[29]

> "1. Whether or not the Government's action has prescribed[;]
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> 2. Whether or not the crude oil shipment covered by Import Entry No. 683-96 has become the property of the Government because it has been abandoned by petitioner by operation of law[; and]

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[23] Docket, pp. 209-212.
[24] Docket, pp. 224-480.
[25] Docket, pp. 499-519.
[26] Docket, p. 761.
[27] Docket, pp. 766-773.
[28] Docket, pp. 831-834.
[29] *Ibid.*, pp. 611-612.

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3. Whether or not petitioner would have paid the lower 3% duty rate if it filed the pertinent import entry within the 30 days period after arrival and unloading of the shipment."

Section 1301 of the TCCP reads:

"SEC. 1301. *Person Authorized to Make Import Entry.* - Imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, from date of discharge of the last package from the vessel or aircraft either (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a holder of the bill or (c) by a person duly empowered to act as agent or attorney-in-fact for each holder: *Provided*, That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: *Provided, further*, That such statements under oath shall constitute prima facie evidence of knowledge and consent of the importer of violation against applicable provisions of this Code when the importation is found to be unlawful"

The "entry" referred to in above quoted section is the IEIRD. Section 205 of the Tariff and Customs Code provides:

"Section 205. *Entry, or Withdrawal from Warehouse, for Consumption.* - Imported articles shall be deemed 'entered' in the Philippines for consumption when the specified entry form is properly filed and accepted, together with any related documents required by the provisions of this Code and/or regulations to be filed with such form at the time of entry, at the port or station by the customs official designated to receive such entry papers and any duties, taxes, fees and/or other lawful charges required to be paid with the customs official designated to receive such monies, provided that the article has previously arrived within the limits of the port of entry.

"Imported articles shall be deemed 'withdrawn' from warehouse in the Philippines for consumption when the specified form is properly filed and accepted, together with any related documents required by any provisions of this Code and/or regulations to be filed with such form at the time of withdrawal, by the customs official designated to receive the withdrawal entry and any duties, taxes, fees and/or other lawful charges required to be paid at the time of withdrawal have been deposited with the customs official designated to receive such payment.

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The Court *En Banc* has already ruled that the "specified entry form" in this case refers to Import Entry Internal Revenue Declaration (IEIRD).[30]

There is no dispute between the parties that: (a) the subject importation arrived on April 7, 1996, and was discharged on April 10, 1996; and (b) petitioner subsequently filed the Import Entry and Internal Revenue Declaration and paid the import duty in the amount of P11,231,081.00 only on May 23, 1996.[31]

Based from the above established facts and provisions of TCCP, petitioner filed the specified entry form beyond the 30-day period. And, for failure to comply with Section 1301 of the TCCP, the subject importation is deemed abandoned. Section 1801 and 1802 of the same Code provides:

> "SEC. 1801. *Abandonment, Kinds and Effects of.* - An imported article is deemed abandoned under any of the following circumstances:
>
> "(a) When the owner, importer or consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or
>
> "(b) When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date of posting of the notice to claim such importation.
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> "Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein."
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> "SEC. 1802. *Abandonment of Imported Articles.* - An abandoned article shall ipso facto be deemed the property of the Government and shall be disposed of in accordance with the provisions of this Code.

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[30] *Commissioner of Customs vs. Chevron Philippines Inc. [Fomerly: Caltex (Philippines) Inc.]*, CTA EB Nos. 121 & 122, March 1, 2007.
[31] Exhibits W & Y; docket, p. 727, & 729.

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> "Nothing in this section shall be construed as relieving the owner or importer from any criminal liability which may arise from any violation of law committed in connection with the importation of the abandoned article.
>
> "Any official or employee of the Bureau of Customs or of other government agencies who, having knowledge of the existence of an abandoned article or having control or custody of such abandoned article, fails to report to the Collector within twenty-four (24) hours from the time the article is deemed abandoned, shall be punished with the penalties prescribed in Paragraph 1, Section 3604 of this Code."

From the foregoing provisions, petitioner's failure to file the IEIRD within the non-extendible period of thirty days resulted to an implied abandonment of the subject importation; and, thus, becomes the property of the government.

In *Commissioner of Customs vs. Chevron Philippines Inc. [Fomerly: Caltex (Philippines) Inc.]*, the Court *En Banc* ratiocinated:

> "Section 1802 of the TCCP provides that an abandoned article shall ipso facto be deemed the property of the Government and shall be disposed of in accordance with the provisions of this Code. 'The term ipso facto is defined as by the very act itself; by mere act. Probably a closer translation of the Latin term would be by the fact itself.' Thus, there is no need for any affirmative act on the part of the government with respect to the abandoned imported articles since the law itself provides that the abandoned articles shall ipso facto be deemed the property of the government, hence, ownership over the abandoned articles is transferred to the government by operation of law pursuant to Section 1802 of the TCCP, as amended by Republic Act No. 7651 known as 'An Act to Revitalize and Strengthen the Bureau of Customs, Amending for the Purpose Certain Sections of the Tariff and Customs Code of the Philippines, As Amended.'
>
> A historical review of the pertinent provisions of the TCCP dispels any view that is contrary to the automatic transfer (i.e. ipso facto) of ownership of the abandoned articles to the government by operation of law, viz:
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> Under the former Administrative Code, Act. No. 2711, Section 1323 of Article XV thereof provides:
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> > SECTION 1323. When implied abandonment takes effect — Notice — An implied abandonment shall not take effect until

> after the property shall be declared by the collector to have been abandoned and notice to the party in interest as in seizure cases.

Thereafter, Republic Act No. 1937 known as 'An Act to Revise and Codify the Tariff and Customs Laws of the Philippines' was enacted. Section 1801 thereof provides:

> SECTION 1801. Abandonment, Kinds and Effect of. — Abandonment is express when it is made direct to the Collector by the interested party in writing and it is implied when, from the action or omission of the interested party, an intention to abandon can be clearly inferred. The failure of any interested party to file the import entry within fifteen days or any extension thereof from the discharge of the vessel or aircraft, shall be implied abandonment. An implied abandonment shall not be effective until the article is declared by the Collector to have been abandoned after notice thereof is given to the interested party as in seizure cases.
>
> Any person who abandons an imported article renounces all his interests and property rights therein.

Presidential Decree No. 1464 entitled "A Decree to Consolidate and Codify All Tariff and Customs Laws of the Philippines" dated June 11, 1978 did not amend the provisions of the TCCP on abandonment. The latest amendment was introduced by Section 1802 of Republic Act No. 7651 which provides:

> SEC. 1802. Abandonment of Imported Articles. — An abandoned article shall ipso facto be deemed the property of the Government and shall be disposed of in accordance with the provisions of this Code. xxx

The amendatory law, R.A. No. 7651, deleted the requirement that there must be a declaration by the Collector of Customs that the goods have been abandoned by the importers and that the importers shall be given notice of said declaration before any abandonment of the articles could become effective.

Clearly, by using the term ipso facto in Sec. 1802 of R.A. No. 7651, the legislature intended that there is neither any need for abandonment proceedings nor a declaration that the imported articles have been abandoned before ownership thereof could be transferred to the government.

> Caltex's failure to file "an entry" within a non-extendible period of thirty days from date of discharge of the last package from the carrying vessel constitutes implied abandonment of the imported articles. Consequently, from the precise moment that the non-extendible thirty-day period had lapsed, the abandoned shipments of imported crude oil shall be deemed the property of the Government of the Republic of the Philippines. Therefore, when Caltex withdrew the crude oil shipments for consumption, it appropriated for itself a property that is already owned by the government. Consequently, Caltex is liable for the total dutiable value of the shipments of imported crude oil amounting to P1,210,280,789.21 reduced by the total amount of duties paid amounting to P316,499,021.00 thereby leaving a balance of P893,781,768.21."

This Court finds petitioner's excuses, that the causes for the delay in the filing of IEIRD are delay in the arrival of the commercial invoice; and the necessity to correct an error in the volume of crude oil received by Petitioner, implausible. Records show that two Bills of Lading were simultaneously issued on March 5, 1996 for the carriage of Arab Light crude oil.[32] One Bill of Lading was for 1,880,057 US barrels; while the other Bill of Lading was for 104,448 US barrels. Thus, the net of imported crude oil can be easily computed as 1,984,505 US barrels.[33] The Bills of Lading should have been submitted as supporting document, together with the IEIRD, for the determination of the correct amount of customs duty which petitioner should pay for its importation.

As there was an implied abandonment, the Government was the owner of the shipment at the time when petitioner withdrew the same. Consequently, petitioner should be held liable for the total dutiable value of the shipment of Arab Light crude oil. The total dutiable value of the shipment should be computed at the time the

[32] Exhibit Q & Q-1; docket, pp. 720-721.
[33] Exhibits R & S; docket, pp. 722, & 723

importation was withdrawn from the carrying vessel pursuant to Section 204 of the TCCP, which reads:

> "Section 204. *Effective Date of Rates of Import Duty.* - Imported articles shall be subject to the rate or rates of import duty existing at the time of entry, or withdrawal from warehouse, in the Philippines, for consumption.
>
> "xxx xxx xxx"

At the time the imported article arrived and removed from the carrying vessel, the rate of import duty applicable was 10%. As computed by the respondent, petitioner is liable to pay the amount of ₱936,899,883.90.

On the issue of prescription, this Court rules in favor of the respondent. The Court agrees with the conclusion of Special Investigatior II Domingo B. Almeda and Special Investigator III Nemesio C. Magno, Jr. of the Customs Intelligence & Investigation Service, Investigation & Prosecution Division of the Bureau of Customs ("CIIS-IPD") that there was fraud. Even then Commissioner Titus B. Villanueva did not differ. Instead, he issued a letter dated October 29, 2001 directing petitioner to immediately pay the deficiency customs duty.[34] Pertinent portion of the Memorandum dated February 2, 2001 by the investigation customs officers reads:

> "On the SECOND ISSUE, whether the entry and duty settlements has already prescribed, the same Code says NO. The specific Section of the Code is hereby reproduced as basis:
>
> *"Sec. 1603. Finality of Liquidation.- When Artiles have been entered and passed free of duty or final adjustments made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of one year, from the date of the final payments of duties, in the absence of fraud o[r] protest be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative. xxx*

[34] Exhibits E & 3; docket, p. 62.

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"The rule is the entry and settlements of duty will be final and conclusive upon all parties after the expiration of one year from the date of the final payments of duties.

"The exception is when there is fraud or protest.

"It is worth to mention at this point that the investigation has established conspiracy to commit fraud against the government, between the former District Collector of the Port of Batangas and Messrs. Casabal and Cabrera of Caltex and Mr. Marasigan of Shell.

"The records show that Caltex and Shell bided their time to file their import entries after the 30 days period has prescribed at 3% rate of duty. The District Collector despite being informed by his subordinates about the lapse of the prescribed period of 30 days allowed the acceptance of the entry and the collection of duty based on the declared rate despite the fact that the Law cited earlier does not grant him such authority.

"Obviously, the District Collector, in conspiracy with the above-named officials of Caltex and Shell acted without authority or abused his authority by giving undue benefits to the importers by allowing the processing, payment and subsequent release of the shipments to the damage and prejudice of the government who, under the law is already the owner of the shipments valued at Php 2,176,155,929.00 which was allowed to be withdrawn by the importers after paying meager amounts of duties and taxes.

"Since fraud is present, prescription, does not apply in this case.

"Based on the foregoing, the government should demand from Caltex and Shell for payment of the value of their respective importation which were considered abandoned by operation of law minus the duties and taxes paid by the companies based on the 3% rate of duty and to pursue criminal action against the District Collector and the officers of Caltex and Shell."

Basic is the rule that the findings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts; and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the government structure, should not be disturbed.[35]

[35] *Philippine National Construction Corporation vs. The Hon. Court of Appeals and CMS Construction and Development Corporation,* G.R. No. 159417, January 25, 2007.

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WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner is **ORDERED TO PAY** the amount of NINE HUNDRED THIRTY SIX MILLION EIGHT HUNDRED NINETY NINE THOUSAND EIGHT HUNDRED EIGHTY THREE PESOS and NINETY CENTAVOS (₱936,899,883.90).

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

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