REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

UNION REFINERY CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. CASE NO. 5917

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

SEP 07 2005 [signature]

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Union Refinery Corporation (hereafter "petitioner"), which seeks the cancellation of the assessment for deficiency value-added taxes, additional special duties and excise duties in the total amount of P138,060,200.49 issued by the Commissioner of Customs (hereafter "respondent") covering petitioner's importations during the taxable years 1991 to 1995. [initials]

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THE FACTS

The facts as stipulated by the parties are as follows:

1) On March 4, 1998, the District Collector of the Port of Manila sent a Demand Letter to herein petitioner assessing it of deficiency taxes in the amount of P295,583,329.10;

2) On April 16, 1998, another Demand Letter was sent to petitioner assessing it of the non-payment of value-added taxes, special duties and excise taxes on its importations during the periods from 1991 to 1995 in the amount of P89,287,486.60;

3) On July 2, 1999, the then Commissioner of the Bureau of Customs Nelson A. Tan formally demanded from petitioner and Oilink International Corporation the total amount of P138,060,200.49;

4) On July 8, 1999, petitioner sent a letter to Commissioner Tan protesting the assessment and the basis of the computation and source thereof; and

5) On July 12, 1999, Commissioner Tan sent another letter to herein petitioner reminding them that the ten (10) day period given is set to expire the following day.

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In his answer, respondent alleged the following special and affirmative defenses:

> 1) This Honorable Court has no jurisdiction over the subject matter of the claim;
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> 2) Petitioner failed to exhaust administrative remedy; and
>
> 3) BOC has jurisdiction over the present collection dispute.

Petitioner presented Liza Rosario Mangaway, Nerissa Reyes Leoncio, Ester Maglayo, and Hernan S. Chua, as witnesses, and documentary evidence, marked as Exhibits "A" to "Z", together with their submarkings.

On the other hand, the respondent presented Nemecio Magno, Jr., Ruben Suan, Anacleto Baltazar, Jr., and Cesar Zabala, as witnesses, and documentary evidence marked as Exhibits "1" to "11", together with their submarkings, and Exhibits "51" to "52-a".

Thereafter, both parties were given thirty (30) days from notice within which to file their simultaneous memoranda.

Both parties having complied thereto, the case was deemed submitted for decision. ave

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THIS HONORABLE COURT HAS JURISDICTION OVER THE PRESENT PETITION.

II

WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE GOVERNMENT FOR THE SAID ASSESSMENT OR DEFICIENCIES THEREOF.

THE COURT'S RULING

We deny the petition.

As regards the first issue, petitioner avers that under *R.A. No. 1125, Section 7(2)*, the Court of Tax Appeals has exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Customs in cases involving liability for customs duties, fees and 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 laws or part of law administered by the Bureau of Customs. According to petitioner, Commissioner

Nelson Tan's July 2 and 12, 1999 letters demanding payment of the questioned assessment, assumed a tenor of finality such that the latter has no alternative, but to bring the matter on appeal before the Court of Tax Appeals. It further emphasized that said letters denied petitioner's request for adjustment of the assessment and therefore unmistakably connotes a final ruling by the Commissioner, which decision is a proper matter of appeal to the Court of Tax Appeals.

On the other hand, respondent counterargues that if the party is aggrieved by the ruling of the Commissioner "x x x in any manner brought before him upon protest x x x", said party may appeal to the Court of Tax Appeals in the manner and within the period prescribed by law and regulations. He argues that the phrase "Decision of the Commissioner of Customs" in *paragraph 2, Section 7 of R.A. No. 1125* shall refer only to the rulings or decisions of the Commissioner of Customs in protest and seizure cases that are elevated to this Court, pursuant to *Section 2402 of the Tariff and Customs Code of the Philippines* (hereafter "TCCP"), as amended. Respondent insists that the July 2, 1999 letter does not operate to set aside the procedural rules and remedies provided by law. Said letter does not dispose with finality the issue of petitioner's liability for duty and tax deficiencies.

Finally, respondent claims that petitioner should have protested and contested the same prior to the filing of the instant petition before the Court. Considering that petitioner failed to avail of said remedies prior to appeal, the same renders the instant case premature for lack of cause of action.

Respondent's contention is devoid of merit.

Section 7 of R.A. No. 1125 provides:

> "**Section 7.** ***Jurisdiction***. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 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 for features 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;
>
> xxx xxx."

The letter dated July 2, 1999 of Commissioner Nelson Tan reads as follows:

"02 July 1999

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

Dear Mr. Co,

A review of the documents covering the importations of **Union Refinery Corporation** (URC) from 1991 to 1995 conducted by the CIIS with the assistance of our Customs Appraisers has established that the amount of PHP99,216,580.00 which you were directed to pay in our demand letter dated 26 March 1999 should be PHP93,411,862.10 after the necessary corrections 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 PHP12,872,468.32 and PHP537,747.00 respectively, or a total of PHP13,410,218.32.

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 PHP2,839,829.00 for additional VAT; PHP5,163,320.00 for additional Special Duty and PHP23,234,968.00 for additional Excise Tax or a total of PHP31,238,123.00.

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Based on the above findings, your tax liability increased to PHP138,060,200.49 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 on-going 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,

(sgd.) NELSON A. TAN
Acting Commissioner"
(*Exhibit "J"*)

In the related case of *Oilink International Corporation vs. Commissioner of Customs, C.T.A. Case No. 5918*, promulgated on July 9, 2001, involving the same facts, the very same above-quoted letter dated July 2, 1999 of Commissioner Nelson Tan was considered by this Court as a final decision rendered by respondent Commissioner involving the disputed assessment, and the issue of whether or not this Court has jurisdiction over the petition was ruled in the affirmative, as follows:

"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:
>
> 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."

On appeal, the above ruling was affirmed by the Court of Appeals in *Commissioner of Customs vs. Oilink International Corporation, CA-G.R. SP No. 68125*, September 29, 2003, wherein it held:

"We resolve the instant controversy in the light of the High Court's pronouncement in *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, where it was held thus:

'Lastly, jurisprudence dictates that a final demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. In *Commissioner of Internal Revenue vs. Ayala Securities Corporation, 70 SCRA* 209, this Court held:

'The letter of February 18, 1963 (Exh. G), in the view of the Court, is tantamount to a denial of the reconsideration or protest of the respondent corporation on the assessment made by the petitioner, considering that the letter is in itself a reiteration of the demand by the Bureau of Internal Revenue for the settlement of the assessment already made, and for the immediate payment of the sum of P758,687.04 in spite of the vehement protest of the respondent corporation on April 21, 1961. This certainly is a clear indication of the firm stand of petitioner against the reconsideration of the disputed assessment, in view of the continued refusal of the respondent corporation to execute the waiver of the period of limitation upon the assessment in question.

This being so, the said letter amounts to a decision on a disputed assessment and, therefore, the court a quo did not err in taking cognizance of this case.' "

We therefore conclude that the subject July 2, 1999 letter of respondent Commissioner of Customs is the final decision of respondent involving the disputed assessment. As such, the present petition falls within the jurisdiction of this Court under *Section 7(2) of R.A. No. 1125.*

As regards the second issue, the Court rules in the affirmative.

Petitioner submits that it is not liable to pay the tax assessments on the following grounds:

1) The assessment is void for having been issued without basis since petitioner had already paid all taxes and duties due on all importations made in 1991 to 1995.

2) The assessment is void for having been issued without due process of law for failing to adequately state the facts and law upon which it is based.

3) The assessment is void for not having been based on import entry documents.

4) The assessment is void for having been based on unauthorized photocopies of inward foreign manifests.

5) The assessment is void for being arbitrary.

6) The right of respondent to assess petitioner for transactions made in 1991 to 1995 has already prescribed.

7) The assessment cannot be held valid based merely on presumptions of regularity of official acts.

On the other hand, respondent counters that considering that the petitioner failed to pay the correct duties and taxes on its oil shipments, importation of the same should not be considered as terminated for the purpose of precluding the Bureau of Customs from assessing and collecting the correct duties and taxes against the petitioner. He further claims that assuming arguendo that prescription lies against the government under *Section 1603 of the TCCP, as amended*, the thorough and comprehensive investigation by the Bureau of Customs of this matter, which clearly establishes petitioner's fraudulent scheme to evade payment of the correct duties and taxes on its oil shipments, shall have to be considered to preclude prescription from setting in.

Finally, respondent claims that as clearly shown by Customs Appraiser Anacleto Baltazar, Jr. in his June 8, 1999 Memorandum (*Exhibit "51"*) and Tabulated Computation of Unpaid Duties and Taxes of Union Refinery Corporation (*Exhibit "52"*), petitioner was assessed for duty and tax deficiency amounting to P143,149,744.41 for non-payment of additional customs duties, special duties, excise taxes and value-added taxes on its 13 shipments consisting of 43,268.529 metric tons of base oil, fuel oil and kerosene (Jet A-1) pursuant to the *TCCP, as* *amended, the NIRC, as amended,* and the applicable *Executive Orders Nos. 438, 433, 478, and 115.*

Petitioner's contentions cannot be sustained.

A review of the records reveals that petitioner was prepared to settle its tax obligations to the government. In several instances, petitioner even offered initial payments for the partial settlement of the assessment then under review. In fact, in its letter to herein respondent dated May 24, 1999, petitioner categorically admitted its tax obligations due the government, and even proposed a payment scheme to be able to fully settle its tax deficiencies. The letter reads as follows:

> "May 24, 1999
>
> Honorable Nelson A. Tan
> Commissioner
> Bureau of Customs
> Port Area, Manila
>
> Sir:
>
> We would like to thank you for giving us the opportunity to settle our tax obligations. We assure you that our company is committed to settle its tax deficiency with the government. However, because of the present economic condition, our financial position does not warrant a full settlement of the amount of P94,216,580.00 at the moment.

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We, however, as agreed upon, respectfully submit our proposal to settle our tax obligations, as follows:

a) URC to advance from Oilink International Corporation's (OIC) receivables from NAPOCOR the amount of P28,264,974.00 to pay the Bureau of Customs (BOC) 30% of its total obligation.

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.

We hope that this proposal would be acceptable to the Bureau as the company is really in a financial crisis at present.

Thank you very much.

Very truly yours,

(sgd.) MANUEL CO
President" (*Exhibit "I"*)

From the aforequoted letter, it is clear that petitioner admits its tax liabilities owing to the government in the amount of P94,216,580.00, which amount was reduced to P93,411,862.10 after the necessary corrections made by the respondent (*Annex "A", Petition for Review*). Petitioner was willing to settle said amount and submitted a proposal to settle its tax obligation. Thus, petitioner cannot evade from its liability by attacking the validity of the subject final demand and assessment. Having admitted its tax liability, petitioner is now estopped from further contesting the validity of the assessment. It must be emphasized that petitioner's admission of its tax obligations was also based on the assessment received from the respondent.

However, even assuming that there was no admission, still petitioner's argument that the assessment is void must necessarily fail.

It is basic that an importation ends only upon full payment of duties and taxes. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles. Thus, failure on the part of the importer to fully settle its taxes does not terminate the importation, giving rise to the right of the respondent to further assess and collect the deficiencies.

In the case at bench, the assessment against the petitioner was based on the findings of the respondent after a report on the alleged oil smuggling activities was received by the office. As a result of the investigation, it was found that petitioner still has unpaid tax obligations. Other than petitioner's self-serving denials, there is nothing in the records to rebut the findings of the respondent It bears emphasis that petitioner miserably and significantly failed to refute the findings of the respondent, and in fact, instead of showing proof of payment of the questioned duties and taxes, what petitioner did was to question the validity of the assessment. If indeed, it had settled all its tax obligations for the oil importations it made during the years 1991 to 1995, it should have just presented the necessary receipts and/or documents showing payment thereof. Petitioner's argument that the documents were already a decade old, and thus, impossible to present is flawed and without factual and legal basis. The first demand letter received by petitioner was in 1998 or three years from the year covered under investigation. It cannot therefore be said that the documents were decade-old. The proofs required could have readily been presented, if indeed existing and available.

It is well settled that assessments are entitled to the presumption of correctness and validity; and should, therefore be considered conclusive in the absence of fraud or illegality or a showing that the determination of the same is not correct or does not proceed from a wrong principle of law (*Commissioner of Internal Revenue vs. Court of Tax Appeals, 195 SCRA 12*). It is, therefore, the duty of the petitioner to prove that the assessment is not correct and was not made in good faith (*Sy Po vs. Court of Tax Appeals, 164 SCRA 524*). Failure on the part of the petitioner to satisfactorily overcome the presumption of regularity and correctness cannot overturn the findings of the respondent.

Considering that petitioner failed to controvert with clear and convincing evidence the findings of the respondent, petitioner is liable to pay the total amount of P138,060,194.42, computed as follows:

DEFICIENCY *(Covering importations from 1991-95)*		***Amount***	***Total***
Deficiency Assessment (as reduced)	P	93,411,862.10	
Additional VAT		12,872,468.32	
Additional Special Duty		537,747.00	106,822,077.42
DEFICIENCY *(shipment of 4,693.937 MT base oil ex M/V "Jian She" No. 8)*			
Excise Tax		P23,234,968.00	
Special Duty		5,163,320.00	
VAT		2,839,829.00	31,238,117.00
Total			**P 138,060,194.42**

As regards the deficiency value added taxes and excise taxes, a delinquency interest of 20% per annum computed from July 12, 1999, date of demand, until the amount is fully paid shall be imposed, pursuant to *Section 249(c) of the NIRC of 1993.*

As regards the deficiency special duties, the same shall bear six percent (6%) legal interest per annum from July 12, 1999, date of demand up to the finality of this Decision. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum from the time the judgment in this

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case becomes final and executory, and until such amount is fully paid, pursuant to the doctrine enunciated in *Eastern Shipping Lines, Inc. vs. Court of Appeals, 234 SCRA 78*, which was reiterated in *Philippine Airlines, Inc. vs. Court of Appeals, 275 SCRA 621*, and recently in *Adelia Francisco vs. Court of Appeals, 319 SCRA 354.*

In sum, all of petitioner's assigned errors failed in the light of jurisprudence and law.

WHEREFORE, premises considered, the instant Petition For Review is hereby **DISMISSED**. Accordingly, petitioner is ordered to pay the respondent the amount of ONE HUNDRED THIRTY EIGHT MILLION SIXTY THOUSAND ONE HUNDRED NINETY FOUR PESOS AND 42/100 (P138,060,194.42), representing unpaid deficiency value-added taxes, special duties and excise taxes on the oil importations during the taxable years 1991 to 1995, including the shipment of 4,693.937 MT base oil.

In addition, as regards the deficiency value-added taxes and excise taxes, petitioner is **ORDERED** to pay a 20% delinquency interest per annum computed from July 12, 1999 until the amount is fully paid, pursuant to *Section 249(c) of the NIRC of 1993, as amended.* As regards

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SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(on leave)
ERLINDA P. UY
Associate Justice

CERTIFICATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

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