REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGFHA, INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS
Respondent.

CTA CASE NO. 5290

Promulgated:
NOV 04 1996

x - x

D E C I S I O N

This is a petition to review the decision of the respondent in Customs Case No. 94-017, dated August 25, 1995, involving forfeiture in favor of the government of a shipment of goods described as "2 x 40' Cont. No. NYKU - 6772906 and NYKU - 6632117 STA 197 Bales of Textile Grey Cloth" (caption, Decision of respondent, Exh. "M", pp. 96-100, CTA rec.), for violation of Section 2530 (f) and (l)-3, 4, and 5 of the Tariff and Customs Code, as amended.

Petitioner is a domestic corporation organized and existing under Philippine laws and is allegedly engaged in, among others, the manufacturing, production and importation of textile products. It is the claimant-intervenor in the aforesaid Customs case together with another claimant, G. Q. Garments, Inc..

The facts, as hereunder quoted from the decision of the respondent, are stated as follows:

110

"That on 12 December 1992, the subject shipment arrived at the Manila International Container Port [MICP] aboard the Vessel S/S "ACX under Bill of Lading No. HKT-138899, consigned to GQ Garments Inc., of 244 Escolta St., Binondo, Manila. It's SGS-CRF [*Societe Generale de Surveillance*-Clean Report of Findings] indicated AGFHA, INC., as consignee, and that FIL-JAPAN, the shipments shipping agent, filed for the amendment of the Inward manifest to change the consignee from GQ Garments Inc., to Agfha, Inc.

On January 22, 1993, FIL-JAPAN issued to AGFHA, INC., the amended Inward Foreign Manifest. Subsequently, AGFHA, INC., forwarded the same for approval by the Law Division, MICP which the latter indorsed to the Customs Intelligence Investigation Service (CIIS).

While the request for amendment was being processed, the CIIS, however, placed subject shipment under Hold Order No. H/CI/01/2293/01 dated 22 January, 1993, on the ground that, per its findings, GQ Garments Inc., could not be located in its given address at 244 Escolta, Binondo, Manila and as such therefore fictitious.

During the hearing of this case, AGFHA, INC., through its President, Wilson Kho, filed a motion for intervention contending that AGFHA, INC., is the lawful owner and actual consignee of the subject shipment. On 2 March 1993, the District Collector of Customs granted the aforesaid motion.

On July 1, 1993, after the trial on the merits, the Collector of Customs came up with a draft decision ordering the lifting of the Warrant of Seizure and Detention issued on factual findings that G.Q. Garments, Inc., is not a fictitious corporation and that there was a valid waiver of rights of the subject shipment by G.Q. Garments, Inc., to Agfha, Inc. Moreover, it ordered the continuation of the processing of the entry for the eventual release of the shipment without prejudice to the amendment of the Inward Foreign Manifest changing the consignee in the Bill of Lading

111

and Inward Foreign Manifest from G.Q. Garments, Inc., to Agfha, Inc.

The aforecited draft decision when submitted to the Deputy Commissioner for clearance and/or approval was referred by the latter to the CIIS for comment.

The CIIS, however, vigorously opposed the said draft decision on the ground that GQ Garments, Inc., is a fictitious consignee and that even if it does exist, its president John John Barlin had no authority to waive the subject shipment in favor of Agfha, Inc.

In a 4th Indorsement dated October 4, 1993, the Deputy Commissioner, relying solely on the comment of the CIIS, denied the Draft decision of the Collector of Customs.

On November 17, 1993, Claimant, G.Q. Garments, Inc., and Claimant-Intervenor, AGFHA, INC., filed a Joint Motion for Reconsideration over the 4th Indorsement issued by the Deputy Commissioner. Consequently, the aforesaid motion for reconsideration was given due course and both claimant and intervenor were given the opportunity to present evidence to substantiate their joint motion for reconsideration.

After hearing on the aforesaid motion, the Collector of Customs issued a draft order granting claimant and intervenor's joint motion for reconsideration on the ground that evidences presented clearly established the legal existence of G.Q. Garments, Inc., and as to the objection of the prosecution that John John Barlin has no authority to waive the subject shipment to Agfha, Inc., the Collector of Customs, based on its factual findings, resolved that the aforesaid unauthorized waiver had been rendered foreclosed and moot when a Board Resolution of the Board of Directors of G.Q. Garments, Inc., ratifying the acts of its president was presented.

In a 1st Indorsement dated June 8, 1994, the Collector of Customs forwarded to the Deputy Commissioner of Customs for clearance/approval the aforesaid draft order

112

granting the joint motion for reconsideration of Claimant and Intervenor and, consequently, lifting and/or quashing the warrant of seizure and detention issued against the subject shipment and its subsequent release to intervenor-claimant.

In its 2nd Indorsement dated June 20, 1994, the Deputy Commissioner forwarded the aforesaid order to this Office for clearance and approval.

In a 3rd Indorsement, this Office directed the Deputy Commissioner of Customs to deny the proposed order of the MICP District Collector of Customs. The pertinent portion of said indorsement reads:

> '1. The subject shipment arrived on 12 December 1992 at MICP with GQ Garments, Inc., as the consignee in the Bill of Lading and the Inward Foreign Manifest. However, it is quite suspicious that it took more than one (1) month before the alleged error in the consignee was discovered by the shipper and by AGFHA, INC., and by GQ Garments especially considering the fact that there is a CRF naming therein AGFHA as consignee of the subject shipment which means that the shipper was contracted by SGS so that the latter can inspect the subject shipment to be imported by consignee; that Mr. Wilson Kho admitted it was AGFHA who ordered the shipment by telephone call; that prior to this shipment there was no order placed in the name of GQ Garments from Indonesia; and that this is already the second of four shipments ordered by AGFHA, INC., from Jakarta, Indonesia.
>
> 2. Mr. Wilson Kho's explanation that the shipper committed an error in naming GQ GARMENTS as that consignee of the subject shipment because his business

card contains the name of both GQ GARMENTS and AGFHA, INC., appears to be an afterthought and self-serving. Moreover, he admitted that he is not an officer nor even a stockholder of GQ GARMENTS so why should his business card indicate his name as President/General Manager of GQ GARMENTS and AGFHA, INC. That is clearly a misrepresentation.

3. During the hearing on April 15, 1994, Mr. John John Barlin of GQ GARMENTS admitted that the letter dated February 11, 1993 (Exh. "4" MR) purportedly signed by him (in which he allegedly informed the Collector of Customs that AGFHA, INC., is the rightful owner of the subject shipment and that GQ GARMENTS is waiving its right over the same) actually came from Wilson Kho. In other words, the said letter is spurious.

4. From the admissions of both Mr. Wilson and Mr. John John Barlin, it is clear that GQ GARMENTS is actually owned by Mr. Wilson Kho and its corporate franchise appears to be being used to perpetrate fraud other scheme to confuse authorities". (pp. 1-4, Decision of respondent in Customs Case No. 94-017 [Seizure Identification No. 93-083 (MICP), Exh. "M", pp. 96-100, CTA rec.)

In deference to the directive of the respondent, the District Collector of Customs ordered the forfeiture of the subject shipment in favor of the government. On appeal, the respondent found no cogent reason to disturb the decision of the District Collector.

Hence, the instant petition.

114

Petitioner assails the decision of the respondent as clearly erroneous. It contends that it was based on mere suspicion as borne out in the 3rd Indorsement of the respondent which has been adopted and incorporated as the basis of the questioned decision, supra, to quote:

> "1. xxx. However, it is quite suspicious that it took more than one (1) month before the alleged error in the consignee was discovered by the shipper and by AGFHA, INC. and G.Q. Garments, Inc. xxx." (Underscoring supplied.)

On this score, petitioner asseverates that decision or rulings by an administrative body should be based on substantial evidence citing the case of ***Alimario vs. Commission on Audit***, **223 SCRA 690**, and not simply on suspicion and conjectures.

Petitioner, likewise, challenges the other conclusions reached by the respondent in his 3rd Indorsement, supra, as contrary to the evidence presented by it before the Collector of Customs.

Firstly, the respondent deemed as an afterthought or self-serving the explanation made by Mr. Wilson Kho, the President of herein petitioner, that the error committed by the shipper in naming G.Q. Garments, Inc. as the consignee of the subject shipment was a result of mix-up in his business card (Exh. "G", p. 72, CTA rec.) which contains the names of both G.Q. Garments, Inc., and

115

Agfha, Inc.. Petitioner stresses that based on the factual findings of the Collector of Customs, the shipper and the shipping company upon arrival of the subject shipment had already requested for the amendment of the shipping documents by changing the consignee from G.Q. Garments, Inc., to Agfha, Inc., in conformity with the SGS-CRF indicating Agfha, Inc. as the actual consignee. Petitioner avers thus that there was merely an inadvertent error on the part of the shipper.

Secondly, petitioner bewails the finding of the respondent that the letter, dated February 11, 1993, purportedly signed by Mr. John John Barlin of G.Q. Garments, Inc., which waived the rights of the latter corporation over the subject shipment to Agfha, Inc. was spurious. Petitioner considers such finding, be it unauthorized or spurious, as of no consequence and a mere surplusage. It bears more emphasis and reliance on the fact that the same has been validly ratified by the Board of Directors of G.Q. Garments, Inc. (Exh. "H", p. 73, CTA rec.). It adds that it is fundamental that only G.Q. Garments, Inc., and not the respondent which can impugn the authority of Mr. John John Barlin to act on its behalf, i.e. to waive the subject shipment in favor of Agfha, Inc..

116

Thirdly, petitioner views it as unfortunate that the respondent relied once again to his suspicion that Agfha, Inc. is using G.Q. Garments, Inc., to perpetrate fraud. It claims that the respondent failed to show that fraud has been committed by it and that there was the intention to evade payment of duties and taxes. It states positively that intentional fraud is never presumed; that it must be proved; and that failure of proof thereof is a bar to forfeiture, citing the cases of ***Republic vs. Ker and Co.,*** Ltd. L-21609, Sept. 29, 1966, 18 SCRA 207; ***Farm Implement and Machinery Co. vs. Commissioner of Customs,*** 24 SCRA 905; and ***Hon. Ramon J. Farolan, Jr., in his capacity as Commissioner of Customs vs. Court of Tax Appeals and Bagong Buhay Trading,*** 217 SCRA 298.

Lastly, petitioner claims in a supplemental petition for review that respondent has made a mockery of administrative justice, contrary to due process of law, when he directed the Collector of Customs to forfeit the subject shipment because an appeal of the decision of the Collector of Customs would later be reviewed by the respondent himself, who earlier ordered the said Collector to make the forfeiture, citing the case of ***Nusselts Industries Corporation vs. Commissioner of Customs,*** CTA Case No. 4449, promulgated May 27, 1993. Worse still, petitioner belabors the fact that respondent

117

did not even expound on the basis of his decision which was only limited to a narration of the facts and the holding of the dispositive portion, absent any explanation or discussion on the merits of the issues involved except to state: "[o]n the basis however, of the above findings of facts and the evidence adduced by the parties herein, we find no cogent reason to rule for the Appellant". (p. 5, Decision in Customs Case No. 94-017, August 25, 1995, Exh. "M", p. 100, CTA rec.)

On the other hand, respondent echoes the following special and affirmative defenses in his Answer, to wit:

> "12. GQ Garments Incorporated was named as consignee in the Bill of Lading and Inward Foreign Manifest. However, in the Clear(sic) Report [of] Findings (CRF), Agfha was named as the consignee of the goods. Considering that prior to the shipment of the goods to the consignee, the SGS will contact the shipper to inform the latter that it would inspect the goods, and considering further that the SGS issued a CRF naming AGFHA, INC. as the consignee of the goods inspected, the error in naming GQ Garments Incorporated as consignee in the Bill of Lading and Inward Foreign Manifest could not have been a case of inadvertence;
>
> 13. The findings regarding the questionable existence of GQ Garments Incorporated was based on investigations made by the CIIS. **First**, the Bill of lading indicated the address of GQ Garments Inc. to be 224 Escolta St., Binondo, Manila. However, upon a verification of the address given, CIIF(sic) officer Alano found out that the address in the Bill [of] lading was that of AGFHA. **Second**, upon verification with the Securities and Exchange Commission, the

118

incorporation papers of GQ Garments Inc. indicated its address at 955 Muelle del Banco National, Escolta, Manila. However, CCIF (sic) officer Alano failed to locate GQ Garments in its address as indicated in its Articles of Incorporation as the address was non-existent and nowhere to be located. **Third**, the addresses of its incorporators had no specific numbers, hence there is no other resort to search for GQ Garments Inc.;

14. Request for the amendment of the Bill of Lading was not made immediately upon the arrival of the goods. While the goods arrived in Manila on December 12, 1992, the request for amendment was made only on January 11, 1993, or thirty days after the arrival of the goods. Petitioner intervened thru a letter dated February 23, 1993. The time interval between the arrival of the goods and the request for amendment as well as that between the request for amendment and petitioner's intervention as claimant of the goods were never explained during the hearings conducted by the Bureau of Customs;

15. In a letter dated February 11, 1993, Mr. John John Barlin, manager of GQ Garments, Inc. waived its rights over the goods to Agfha, Incorporated. This act of Mr. Barlin was ratified in a board resolution dated October 15, 1993. Both documents, the waiver and the ratification, are dubious and questionable as the signature of Mr. Barlin in the waiver is not identical nor closely similar to the one in the waiver.

16. Respondent never presumed fraud. The circumstances surrounding the case and the documents presented collectively point to the existence of fraud." (pp. 4-6, Answer, pp. 38-40, CTA rec.)

Records show that during the hearing of July 18, 1996 of this case, counsel for the respondent manifested that considering that he has no witness to present, he is just submitting the case on the basis of the records available without necessity of filing a memorandum. Counsel for the petitioner manifested likewise that he will not file his memorandum. It is observed that only the petitioner submitted a formal offer of evidence in this case.

The issue thus confronting Us is: whether or not the subject shipment is liable to forfeiture under Section 2530 (f) and (l)-3, 4 and 5 of the Tariff and Customs Code of the Philippines, as amended.

The aforementioned provisions of law are hereunder reproduced for easy understanding, thus:

> "Section 2530. ***Property subject to Forfeiture under Tariff and Customs Law.*** - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture.
>
> xxx xxx
>
> f. Any article the importation or exportation of which is effected or attempted *contrary to law* or any article of prohibited importation or exportation, and all other articles which in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation and exportation of the former;
>
> xxx xxx
>
> l. Any article sought to be imported or exported:
>
> xxx xxx
>
> (3) On the strength of a *false declaration or affidavit* executed by

120

> the owner, importer, exporter or consignee, concerning the importation of such article.
>
> (4) On the strength of a *false invoice or other document* executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and
>
> (5) Through any *other practice or device contrary to law* by means of which such articles was entered through a customhouse to the prejudice of the government." (Emphasis supplied)

After a careful review of the facts and circumstances obtaining at bar and relating the same to the legal bases relied upon by the respondent, We readily rule in favor of the petitioner.

From the standpoint of procedural law alone, respondent's performance in the trial of this case is utterly dismal and disfavored. He did not bother to prove before Us the presence of the element of fraud in the importation of the subject shipment. What he did is merely to cross-examine witness Mr. Wilson Kho in the hearing of March 4, 1996 (Minutes of the session, p. 58, CTA rec.) and nothing else. Respondent is strongly reminded that cases brought before this Court are litigated *de novo*, meaning the parties are expected to adduce evidence in support of their respective legal theories. This particular observation brings special

121

relevance when we take into account the nature of the instant petition, which is one involving forfeiture. Our Honorable Supreme Court has invariably laid down the rule in the matter of fraud and forfeiture, thus:

> "Fraud is never presumed. It must be proved (**Republic vs. Ker and Company, Ltd., L-21609, Sept. 26, 1966**). Failure of proof of fraud is a bar to forfeiture. The reason is that "forfeitures are not favored in law and equity (**Yu Phi Kim vs. Amparo, 86 Phil. 441, 446**)." [**Farm Implement and Machinery Co. vs. Commissioner of Customs, 24 SCRA 905**]

> "Applying subparagraph (5), fraud must be committed by an importer/consignee to evade payment of the duties due. We support the stance of the Court of Tax Appeals that the Commissioner of Customs failed to show that fraud had been committed by the private respondent. The fraud contemplated by law must be actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. (***Hon. Farolan, Jr. vs. Court of Tax Appeals,*** **217 SCRA 298**)

Construing thus the above rulings that fraud must be proved and with the lackadaisical attitude of the respondent, it is not hard to imagine that at the very outset respondent's position is doomed to fail.

Be that as it may, this Court considers it apropos to further endeavor into the disquisition of the findings of the respondent in his questioned decision for the sake of legal clarity.

122

As can be gathered from the special and affirmative defenses of the respondent, supra, it was alleged that he never presumed fraud, but that the circumstances surrounding the case and the documents presented collectively pointed to the existence of fraud.

We vigorously disagree. This Court could not fathom any individual or collective importance of the said findings as indicative of the actual commission of fraud or any attempt or frustration thereof. As defined, actual or intentional fraud consist of deception willfully and deliberately done or resorted to in order to induce another to give up some right (***Hon. Ramon Farolan, Jr. vs. Court of Tax Appeals,*** **supra,** citing the case of ***Aznar vs. Court of Tax Appeals,*** **58 SCRA 543).** It must amount to intentional wrong-doing with the sole object of avoiding the tax. (***Aznar vs. Court of Tax Appeals,*** supra.)

The circumstances or findings presented by the respondent in his Answer do not reveal to us any kind of deception that could have been played upon his Bureau to give up some of its right, e.g., to collect correct taxes on properly declared shipment of goods. Such circumstances are nothing more than mere half-baked premises that fail to support the proposition sought to be established which is the commission of fraud in accordance with Section 2530 (f) and (l)-3, 4 and 5 of the Tariff and Customs Code of the Philippines, as amended.

Firstly, respondent contends that the naming of G.Q. Garments Inc. as consignee in the Bill of Lading and Inward Foreign Manifest could not have been a case of inadvertence because the shipper, prior to the shipment of the goods, is contacted by SGS for pre-inspection of said shipment, and in this case, SGS issued a CRF naming Agfha, Inc. as the consignee of the goods inspected.

In other words, respondent is saying that the shipper knew all along that Agfha, Inc., was the real consignee due to the pre-inspection done by SGS and the corresponding issuance of the CRF naming Agfha, Inc., as the consignee. So that in naming G.Q. Garments, Inc., as the consignee in the Bill of Lading and Inward Foreign Manifest, the same was intentional and deliberately done and not a case of error or inadvertence as claimed by the petitioner.

We could not believe that respondent assumed the above circumstance as a fact in his attempt to forfeit the subject shipment in favor of the government. The respondent is trying to second guess the act of the shipper that the latter had prior knowledge of Agfha, Inc., as the true consignee before the shipment. We deem

124

such conclusion of the respondent as pure hearsay. Obviously, it is only the shipper and/or the SGS who could personally vouch for events that transpired prior to the shipment of the goods subject matter of this case.

And contrary to the overwhelming evidence submitted by the petitioner, respondent chose to close his eyes to the truth. Instead of relying on his adamant belief, respondent should have adhered to the basic rules on evidence. Petitioner has offered the following controverting and convincing evidence (also submitted in the hearings conducted before the Collector of Customs and respondent, TSN, Hearings of February 5, 1996, pp. 28, 33-34, 37,40; and, March 4, 1996, p 44), namely:

1. Telex message from the shipping agent of shipper P.T. Mandala Subur Textile Industry to FIL-JAPAN Shipping Company Manila, requesting amendment of the Bill of Lading and other shipping records, to change consignee from G.Q. Garments, Inc. to Agfha, Inc. - Exhibit "A";

2. Application for Amendment of the Inward Foreign Manifest filed by the shipper's agent, FIL-JAPAN Shipping Company, for approval with the Customs Law Division, Manila International Container Port (MICP), to change the name of the consignee from G.Q. Garments, Inc. to Agfha, Inc. - Exhibit "B";

3. Letter dated February 10, 1993 by Wilson Kho, president of Agfha, Inc. addressed to Atty. Buenaventura

125

Maniego, District Collector of Customs, MICP, North Harbor, Manila, manifesting the former's intention and willingness to pay the corresponding duties and taxes on the subject shipment based on a higher valuation indicated in the Clean Report of Findings (CRF) as recommended by the SGS, as against the lower valuation indicated in the invoice - Exhibit "C";

4. Bill of Lading covering the subject shipment showing the shippers as P.T. Mandala Subur Textile Industry and the consignee as G.Q. Garments, Inc. - Exhibit "D";

5. The Clean Report of Findings (CRF) dated December 9, 1992 showing the consignee of the subject shipment as Agfha, Inc. and the shipper as P.T. Mandala Subur Textile Industry - Exhibit "E"; and

6. Import Authority No. (IAN) 18.012.37679, assigned by the Central Bank of the Philippines appearing on the right hand portion of the CRF marked as Exhibit "E" - Exhibit "E-1". (pp. 1-3, Petitioner's Formal Offer of Documentary Exhibits, pp. 59-61, CTA rec.)

The above evidence speak for themselves. If any deception is intended by petitioner Agfha, Inc., why would it apply for an Import Authority Number under its name? It knew for certain that the subject goods will be pre-inspected by SGS under its name. If we are going to believe the respondent that somehow the naming of G.Q. Garments, Inc., was a deception, then petitioner must be a fool because it openly and officially declared the

126

subject shipment under its name whereby it is expected that authorities through the required CRF would learn of the glaring discrepancy. Respondent's assumption is not in accord with the ordinary course of life. We believe here that petitioner through its President, Mr. Wilson Kho, had taken ordinary care of his business concerns (Sec. 3[d] of Rule 131 of the Revised Rules of Court), especially in applying for an Import Authority. Petitioner, thus, is simply complying with the import procedures normally attendant to its business of importing textile products.

Moreover, the steps taken by the shipping agent to effect the necessary correction in the Bill of Lading and Inward Foreign Manifest should have been appreciated with greater weight than the general inference arrived at by the respondent that the naming of the consignee was not a case of inadvertence. We note that the technical description of the subject shipment appearing on the CRF and the Bill of Lading are exactly the same except for the name of the consignee (Exhs. "D" and "E", pp. 69-79, CTA rec., respectively). Right before his eyes, however, respondent still refused to heed the statements of the shipping agent that there was a <u>mistake</u> in the naming of the consignee. Thus, a mere mistake, taken as simply that, cannot be considered as fraudulent intent, more so, if in the course of the subject importation it appears clearly that such mistake is being corrected.

Furthermore, respondent is vacillating. The SGS-CRF should have been given the strongest probative weight in clarifying the issue of who is the real consignee in the case at bar. The SGS is the *alter ego* of the respondent when it comes to pre-inspection of shipment destined for importation into the Philippines from all countries. It takes into consideration such matters as regards the quality, quantity, price, dutiable value, verification of Customs and Tariff Code Classification and Verification of tariff rates of imported goods prior to shipment to the Philippines (Customs Memorandum No. 39-92 [11.1 and 4j). Yet, respondent elected to disregard the contents of the CRF naming Agfha, Inc., as the consignee of the subject shipment.

Lastly, petitioner expressed its willingness to pay the higher duties and taxes imposed on the subject shipment as indicated in the CRF. This should have been accepted by the respondent. From the very start up to the end, petitioner had been consistent in its actuations. It applied for an Import Authority with the Central Bank of the Philippines which authority was used by the SGS in making the necessary pre-inspection and issuing the CRF. It undertook remedial measures to amend the consignee in the Bill of Lading and Inward Foreign Manifest when the shipper made a mistake. It then manifested to pay the correct taxes and duties. The government stands to lose nothing. Respondent could have easily alleviated the problem besetting the petitioner. Unfortunately, respondent was not equal to the occasion as demanded by it.

On the second finding of the respondent that investigations made by CIIS on the address and incorporation papers of G.Q. Garments, Inc. with the SEC show questionable existence, We believe that respondent is deviating from the truth. From his own admission, respondent conducted investigations on G.Q. Garments, Inc.'s incorporation papers. He did not say that the latter corporation had no papers and that it was not registered with the SEC. In fact, respondent impliedly admitted that G.Q. Garments, Inc., is a registered and existing corporation when it sought to locate the corporation on the given address provided in its incorporation papers.

The series of hardships befalling petitioner stemmed originally from the information gathered by the respondent from his CIIS agents that simply because G.Q. Garments, Inc. cannot be located on its given address, ergo, it was inexistent. The conclusion reached by CIIS agents is contrary to law. Section 20 of the Corporation Code of the Philippines states, thus:

> "Sec. 20. *De facto corporations.* - Incorporation of any corporation claiming in good faith to be a corporation under this Code, and its right to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such corporation may be a party. Such inquiry may be made by the Solicitor General in a *quo warranto* proceeding."

Until declared by the courts in a proper *quo warranto* proceeding, the corporate existence of G.Q. Garments, Inc., cannot thus be collaterally attacked and impugned by the respondent.

Of importance, evidence on record points to the fact that G.Q. Garments, Inc., is a registered importer with Registration No. 91-5624 under Customs Intelligence and Investigation Service List of Registered Importers as contained in Customs Memorandum Order No. 149-88 for the year 1991 (Exhs. "F" and "F-1", p. 71, CTA rec.).

Added to this, petitioner through its President, Mr. Wilson Kho, has satisfactorily explained the inability of the CIIS agents to locate the given address of G.Q. Garments, Inc.. Mr. Kho stated, thus:

> "Q. Records show that as verification as to the address of both G.Q. Garments, Inc. and Agfha was made by the Bureau of Customs and the supposed business

130

> address of G.Q. Garments, Inc. was not determined, could that be correct?

A. The address on the Bill of Lading (BL) is #244 Escolta Street, Binondo, Manila and the S.E.C. address of the G.Q. Garments, Inc. is #955 Muelle de Banco Nacional Street, Binondo, Manila but it's on the same building. The building has two entrance[s] one at the front is #244 Escolta Street, Binondo, Manila and at the back is #955 Muelle de Banco Nacional Street, Binondo, Manila. I think the representative of the Bureau of Customs did not explore nor asked the guard or even inquired as to the whereabout of the office." (TSN, Hearing of March 4, 1996, pp. 50-51)

Verily, respondent's issuance of Warrant of Seizure and Detention and the forfeiture order issued against the subject shipment which were originally based on the alleged inexistence of G.Q. Garments, Inc., (admitted by respondent in his Answer, par. 5; p. 36, CTA rec.) bore the imprint of arbitrariness and deserve to be stricken down as lacking sufficient basis in fact and in law.

Thirdly, respondent avers that the long time interval between the arrival of the goods and the request for amendment of the Bill of Lading and Inward Foreign Manifest as well as that between the request for amendment and petitioner's intervention as claimant of the goods were never explained during the hearings conducted by his Bureau.

131

Taken as is, the preceding assertion of respondent is without probative value. It does not purport to demonstrate any specific act or omission of the petitioner that can be construed as fraught with deception. What if there were delays in the processing of the papers attendant to the subject shipment? Does the failure to explain this in the hearings mean that there was a reasonable ground to believe that fraud has been committed? What we are seeing at bar is respondent's inclination in conjuring up surmises and suspicions on a mere delay without any credible backing of facts.

Lastly, respondent avers that the letter of waiver, dated February 11, 1993, of Mr. John John Barlin, manager of G.Q. Garments, Inc., and the Board Resolution, ratifying the waiver, were both dubious and questionable as to the signature of Mr. Barlin which is found to be not identical nor closely similar to each other in said documents.

First of all, it is pointed out in the decision of the respondent that the letter of waiver, dated February 11, 1993, was spurious (p. 4, Decision of Respondent; p. 99, CTA rec.). However, the authenticity and due execution of the Board Resolution (Exh. "H", p. 73, CTA rec.) has not been doubted.

132

In the light of the above, We consider the apprehension of the respondent quite untenable. The Board Resolution clearly confirmed both the ownership of Agfha, Inc. over the subject shipment *and* the letter of G.Q. Garments, Inc., dated February 11, 1993, consigning all its right over the said shipment to Agfha, Inc.. We note that Mr. John John Barlin, as President, was a signatory to the Board Resolution. This in effect admits of the fact that his signature in the previous letter was his also, notwithstanding the alleged dissimilarity. Be that as it may, the Board Resolution separately confirmed the ownership of Agfha, Inc. over the subject shipment.

Thus, we arrived at the overall conclusion that the findings of the respondent in his assailed decision are not altogether in consonance with Section 2530 (f) and (l)-3,4 and 5 of the Tariff and Customs Code of the Philippines, as amended. Respondent failed to identify any act of the petitioner or even that of G. Q. Garments, Inc., in relation to the importation of the subject shipment as being *contrary to law* as provided in said Section 2530 (f). In the same vein, respondent was not able to mention any *false declaration, affidavit, invoice or other documents; or such other practice or device contrary to law* as having been participated in by the

133

petitioner or G. Q. Garments, Inc., which can be deemed as violative of said Section 2530 (1)- 3, 4 and 5.

Prescinding from the above, We would like to make a restatement of the pertinent portions of our decision in CTA Case No. 4449, promulgated on May 27, 1993, entitled ***"Nusselts Industries Corporation vs. Commissioner of Customs"***, which we firmly believe respondent and his District Collector has lost sight of in the way they handled petitioner's case ***a quo***, to quote:

> "It is not too much to point out that it is an elementary rule in procedure that a decision of the Collector of Customs just like that of a judge (or a person or a body lawfully authorized to issue decisions) must be in writing personally, independently, and directly prepared by him (Sec. 1, Rule 36, Revised Rules of Court). For the Commissioner to summarily dismiss or overturn whatever recommendations and dictate the Collector of Customs to decide whatever is in conformity to his whims and caprices is a blatant usurpation of the latter's powers under Section 2312 of the Revised Tariff and Customs Code. The Commissioner cannot hide under the cloak of exercising the power of supervision and control over his subordinates for it will render the doctrine of exhaustion of administrative remedies and due process for naught. The palpably flagrant anomaly of the Commissioner of Customs reviewing the decision of the Collector of Customs, (which actually was that of the former) is a mockery of administrative justice. In order that the review of the decision of a subordinate officer might not turn out to be farce, must perforce not dictate his own view on the officer whose decision is under his review; otherwise, there could be no real review of the case. The decision of the reviewing officer would be a biased view...

B4

> (see related case of Zambales Chromite Mining Co., et. al. vs. Gozon, G.R. No. L-49711, November 7, 1979). In such case, needless to say, the appeal becomes a useless formality. It is reduced to an idle ceremony. There would thus be a denial of procedural due process (New Filipino Maritime Agencies, Inc. vs. Rivera, L-45359-60, June 15, 1978). ***Hence, in the interest of justice and fair play, this practice of the Commissioner dictating his Collector what to decide must be stopped.*** Anyway, he can affirm or deny the decision of his subordinate Collector when the proper time comes as provided under Section 2313 of the Revised Tariff and Customs Code." (*Italics supplied.*)

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **GRANTED**. Accordingly, the decision of the respondent in Customs Case No. 94-017, dated August 25, 1995, affirming the decision of the MICP Collector, dated September 5, 1994, which decreed the forfeiture of the subject shipments in favor of the government, is hereby **REVERSED** and **SET ASIDE.** Respondent is hereby **ORDERED** to effect the immediate **RELEASE** of the subject shipment of goods in favor of the petitioner. No costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

135

CERTIFICATION

I hereby certify that this 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