REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NARCISO YTING,
Petitioner,

- versus -

THE COMMISSIONER OF CUSTOMS
Respondent.

C.T.A. CASE NO. 5462

Promulgated:
JAN 14 1999

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DECISION

This is a petition to review the Decision of herein Respondent, through his Deputy Commissioner, Licerio C. Evangelista, involving a seizure case docketed as Seizure Identification No. 94-175 (MICP) for violation of Section 2503 in relation to Section 2530 (f) and (l)-3,4 and 5 of the Tariff and Customs Code of the Philippines ("TCCP", for brevity), the dispositive portion of which states:

> "WHEREFORE, by virtue of the authority vested in this Office by law, subject shipment is hereby FORFEITED in favor of the government, the same to be disposed of in the manner prescribed by law."

Petitioner is of legal age, a resident of Signal Village, Taguig, Metro Manila, and employed as a warehouseman of Customs Bonded Warehouse ("CBW", for short) No. 84 of Duty Free Philippines, Inc.[1] located at FTI Complex, Taguig, Metro Manila.

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1 An instrumentality of the Philippine Tourism Authority established pursuant to Executive Order No. 46 (Petition, p. 1)

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The facts are simple.

In 1994, Duty Free Philippines, Inc., decided to ship some of its slow-moving imported goods for sale in its duty free sales outlet designated as CBW No. 84-005 located at Master International Hotel in Bajada, Davao City, back to its main warehouse at Taguig, Metro Manila, designated as CBW No. 84. The shipment was packed in one 20-feet container and loaded on coastwise vessel M/V "Mega One" in Voyage No. 94-006 from Davao to Manila under Bill of Lading No. 03-7306032 of Aboitiz Transport System. It was consigned to "NARCISO YTING, Duty Free Phils, FTI Cmplx., Taguig" under a "door to door" type of delivery service.

Upon its arrival at the Manila North Harbor, District Collector Buenaventura C. Maniego of the Manila International Container Port, ordered the seizure of the said shipment on the recommendation of Acting Collector Pacifico M. Bautista of the Sub-Port of North Harbor that the shipment was not covered by a transsshipment permit from its port of origin; that there was no advance notice from the port of origin to the Sub-Port of North Harbor regarding the shipment; and that, the shipment was not continuously under guard when transported to Manila.

After hearing of the seizure case, District Collector Maniego ordered the aforementioned forfeiture of the shipment on the basis of the following findings, to wit:

> "From a review of the evidence presented by the parties, it appears that there was an attempt to deviate the subject articles to other outlets other than the DFP. Although the container was sealed, the same was merely consigned to a certain Narciso Yting whose identity at the time of arrival of the shipment could not be ascertained, whether he is an employer of the DFP or not. This fact was bolstered by the investigation made by the Officer-on-case and the shipping agent who tried to contact the said consignee Narciso Yting but to no avail. Moreover, the shipment was not really underguarded and stayed for a while in the custody of the shipping lines, a situation which is highly suspicious, hence, the reason for the issuance of the WSD against the shipment in order to prevent the deviation of the same to other outlets other than the DFP.
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> Although Duty Free Philippines presented documentary exhibits regarding its importations of the same kind of articles, such merely showed the fact of importation of the goods but did not overcome the findings that there was an attempt to deviate it to other outlets. Duty Free Philippines is allowed to sell its importations only to tourists and balikbayans or overseas contract workers. Thus, for it to deviate the goods and sell the same to local outlets would be contrary to law and would defeat not only the very purpose for which it was established to the damage and prejudice of the local manufacturers who need to be protected."

Petitioner appealed its case to herein respondent Commissioner of Customs, through Deputy Commissioner Licerio C. Evangelista, as abovementioned, but the same was affirmed by the latter in his 2nd Indorsement of

December 6, 1996 to District Collector Maniego. Hence, this appeal.

At bar, Petitioner contends that there was no violation of any customs regulation to justify seizure of the shipment. It asserts that "[u]nder Customs Administrative Order No. 1-78, 'transshipment' permits are only required for the transfer of goods from the port of transshipment (the Philippine port where the goods have been unloaded by the importing vessel from abroad) to another port in the country where the goods are to be finally discharged" and such "requirement does not apply to subsequent transfers of the imported goods," as in this case.

Petitioner repudiates the finding of Acting Collector Bautista that there was no "advance notice" given by Duty Free Philippines, Inc., of the incoming shipment from Davao to Manila. It contends that there was a facsimile notice sent to Mr. Arnold C. Abellon, Chief of Customs Duty Free Shop Division at the Ninoy Aquino International Airport Customhouse, informing him in advance of the incoming arrival of the goods from Davao.

Further, Petitioner asseverates that the requirement of continuous underguarding applies only to shipments just imported from abroad and intended for transfer from the customs zone to customs bonded warehouses. It avers

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thus that such requirement does not apply because its shipment merely came from Davao.

Lastly, Petitioner assails the finding of the Respondent that there was an attempt to deviate the shipment to other outlets as absolutely without rational basis.

In his Answer, Respondent simply reiterated the findings contained in his questioned Decision and invoked the rule on non-forum shopping in seeking the outright dismissal of the case at bar due to Petitioner's failure to submit the required certification against forum shopping per Supreme Court Administrative Circular No. 04-94. In a Resolution, dated June 13, 1997, however, this Court rejected Respondent's contention and decided to admit Petitioner's certification which was subsequently submitted before this Court as a satisfactory compliance with the said requirement.

Records show that it is only the Petitioner who formally offered evidence and submitted memorandum in its behalf.

The issue presented for resolution is:

> Whether or not there was a violation of customs laws or regulations which justifies the seizure and forfeiture of the subject shipment.

After a thorough and searching study of the facts and circumstances, as well as the arguments and the laws

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and jurisprudence applicable to the case at bar, this Court resolves to dismiss the instant Petition for Review on the ground of lack of jurisdiction.

In the case of the **Development Bank of the Philippines vs. Court of Appeals**, 180 SCRA 609, the Honorable Supreme Court expressed "its entire agreement with the conclusion of the Court of Appeals-and the basic premises thereof-that there is an 'irreconcilable repugnancy x x between Section 7(2) of R.A. No. 1125 and P.D. (Presidential Decree) No. 242,' and hence, that the later enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier."

In the above case, the Court of Appeals sustained the position of the Customs Commissioner that it was grave error for this Court to have taken cognizance of its case with the Development Bank of the Philippines, a government-owned or controlled corporation, in view of the explicit provisions of Section 1 of P.D. No. 242 which prescribes the procedure for administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Section 1 of P.D. No. 242 provides, to wit:

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> "**SECTION 1.** Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations but excluding constitutional offices or agencies, arising from the interpretation and application of statues, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree." (Underscoring supplied)

This provision of P.D. No. 242 is now reiterated under Section 66, Chapter 14 of Book IV of the Administrative Code of 1987, on controversies among government offices and corporations, to wit:

> **SEC. 66.** ***How Settled.*** — All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and INSTRUMENTALITIES of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving Congress, the Supreme Court, the Constitutional Commissions, and local governments. (Emphasis and underscoring supplied)

Section 70 of the same Code discusses the finality of the decision of the Secretary of Justice, Solicitor General or the President, as the case may be, when it states, thus:

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> **SEC. 70.** The decision of the Secretary of Justice as well as that of the Solicitor General, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may, however, be taken to the President where the amount of the claim or the value of the property exceeds one million pesos. The decision of the President shall be final. (Underscoring supplied)

In deference thus to the ruling of the Honorable Supreme Court in the Development Bank of the Philippines case, this Court has no recourse but to similarly apply and dismiss the instant case on account of the fact that Duty Free Philippines, Inc., the owner of the consigned goods, is admittedly an instrumentality of the Philippine Tourism Authority, an agency of the government attached to the Department of Tourism. (see also the cases of **Philippine National Bank vs. Commissioner of Internal Revenue**, CTA Case No. 4415, March 19, 1991; **Government Service Insurance System vs. Commissioner of Internal Revenue**, CTA Cases Nos. 4054 & 4057, August 28, 1990; **National Housing Authority vs. Commissioner of Internal Revenue**, CTA Case No. 4374, September 24, 1990; **Philippine International Trading Corporation vs. The Honorable Commissioner of Internal Revenue**, CTA Case No. 4417, October 8, 1990; **Philippine National Oil Company vs. Hon. Bienvenido A. Tan, Jr. in his capacity as the Commissioner of Internal Revenue**, CTA Case No. 4155, May 30, 1990; **Philippine National Bank vs. The Commissioner of Internal Revenue**, CTA Case No. 4316, July 5, 1991,

Petron Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4302, July 9, 1990; and **National Development Company vs. Commissioner of Internal Revenue**, CTA Case No. 5309, July 2, 1996 and September 4, 1996).

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DISMISSED** on the ground of lack of jurisdiction.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate 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

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