REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

GST PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS and SECRETARY OF FINANCE,
Respondents.

C.T.A. CASE NO. 7133

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUL 1 7 2008
1:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by GST Philippines, Inc. appealing the letter dated September 30, 2004 issued by the District Collector, Atty. Reynaldo S. Nicolas, demanding from petitioner the amount of P1,379,424.00 in additional duties and taxes for its two (2) shipments.

GST Philippines, Inc. (Petitioner) is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at the 2nd Floor, ALPAP I Building, 140 L.P. Leviste Street, Salcedo Village, Makati City. It is primarily engaged in the business of manufacturing, processing, erecting, installing, selling, importing, exporting and dealing in all kinds, forms and combinations of iron, steel or other metals,

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such as, but not limited to, grinding balls, and rods, structural steel, forged steel, cast ferrous metals, mechanical appliances, instruments, any and all kinds of industrial machineries and equipment and any and all processes and products and any and all other analogous or related objects.[1]

The Commissioner of Customs (Respondent) is the duly appointed official of the Bureau of Customs whose functions include, among others: (1) the assessment and collection of lawful revenues from imported articles and all other duties, fees, charges, fines, and penalties accruing under the tariff and customs laws; (2) the enforcement of the tariff and customs laws and all other laws, rules and regulations relating to the tariff and customs administration; and (3) the supervision and control of all import and export cargoes, landed or stored in piers, airports, terminal facilities, including container yards and freight stations, for the protection of government revenue.[2]

The Secretary of Finance is the duly appointed official of the Department of Finance who exercises full supervision and control over the Bureau of Customs.[3]

On December 12, 1999, a shipment covered by Clean Report of Findings (CRF) No. ITA 800288 R1, was exported from Italy bound for the Philippines and consigned in the name of petitioner (First Shipment).[4] The First Shipment arrived at the Manila International Container Port (MICP) on January 20, 2000. Petitioner paid the duties and taxes based on the declared

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), *Rollo*, p. 137.
[2] Par. 2, JSFI, *Rollo*, p. 138.
[3] Par. 3, JSFI, *Rollo*, p. 138.
[4] Exhibit "A", *Rollo*, p. 262.

invoice value of US$450.00/MT for the First Shipment under Entry No. C8511-00. Upon payment of the duties and taxes, the First Shipment was released.[5]

On March 13, 2000, another shipment covered by CRF No. ITA 035398, was exported from Italy bound for the Philippines, also consigned in the name of petitioner (Second Shipment).[6] The Second Shipment arrived at the MICP on March 23, 2000. Petitioner paid the duties and taxes based on the declared invoice value of US$461.35/MT for the Second Shipment under Entry No. C26222-00. Upon payment of the duties and taxes, the Second Shipment was released.[7]

On April 12, 2000, petitioner sent a letter to the Deputy Commissioner of the Bureau of Customs, also the Chairman of the Customs-*Société Générale de Surveillance* (SGS) Imports Valuation and Classification Committee (Committee) stating that reliance by the Customs Appraiser for the First Shipment on a similar importation covered by CRF No. ITA 028653 is erroneous.[8]

On March 23, 2001, petitioner received two (2) demand letters from Buenaventura Maniego, District Collector of Customs, MICP (Collector), dated June 22, 2000 and July 24, 2000, advising it that the Committee has issued two (2) resolutions directing petitioner to pay additional duties and taxes in the amounts of P1,042,875.00 and P336,549.00 for the Second and First Shipments, respectively. In the Demand Letters, the Collector requested petitioner to settle the two amounts within ten (10) days from receipt of the

[5] Pars. 5 and 13, JSFI, *Rollo*, pp. 138 and 140.
[6] Exhibit "B", *Rollo,* p. 263.
[7] Pars. 6 and 14, JSFI, *Rollo*, pp. 138-139 and 140.
[8] Par. 7, JSFI, *Rollo*, p. 139; Exhibit "C", *Rollo*, pp. 264-265.

letters; otherwise, the Bureau of Customs would be constrained to institute the necessary legal action to protect the interest of the government. The Collector also stated that should petitioner fail to pay within the ten-day period, petitioner's pending or incoming shipments would be put on hold until such time that its alleged obligation is settled, pursuant to Section 1508 of the Tariff and Customs Code of the Philippines (TCCP).[9]

The Resolution of the Committee for the First Shipment provided in part:[10]

> "Respectfully referred to the District Collector, MICP. Attn.: Chief, Cash Division for his information and guidance is the within copy of the duly approved disposition form of even date, which reflects the findings/resolution of the Customs-SGS Imports Valuation and Classification Committee at its meeting held on 16-17 May 2000, relative to the following case, to wit:
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> xxx xxx xxx
>
> RESOLUTION:
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> To apply the previous decision of CRF No. ITA 028653 in absolute value.
>
> xxx xxx xxx
>
> Covering entry to be reliquidated. In the meantime, other shipments of importer to be put on hold until full payment of duties and taxes due, based on the foregoing resolution. xxx
>
> Recommending re-appraisal of said shipment from $450/mt to $1199.84/mt as per approved BOC-SGS Committee Resolution – to apply Revision Order No. 11-95 and 5-97 at $1,499.00/mt but less 20% as it represents a third country value but this time it is all the same description and country of origin."

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[9] Par. 8, JSFI, *Rollo*, p. 139; Exhibits "D" and "E", *Rollo,* pp. 266 and 276, respectively.
[10] Par. 15, JSFI, *Rollo*, pp. 140-141; Exhibits "D-9" and "D-10", *Rollo*, pp. 282-283.

On the other hand, the Resolution of the Committee for the Second Shipment provided in part:[11]

> "Respectfully referred to the District Collector, MICP. Attn.: Chief, Cash Division for his information and guidance is the within copy of the duly approved Disposition Form of even date, which reflects the findings/resolution of the Customs-SGS Imports Valuation and Classification Committee at its meeting held on 4-5 May 2000, relative to the following case, to wit:
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> xxx xxx xxx
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> <u>RESOLUTION</u>:
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> To adopt the appraiser's recommended value at US$1,999.58/mt which was sourced from a previous Committee decision under CRF No. 028653.
>
> xxx xxx xxx
>
> Covering entry to be reliquidated. In the meantime, other shipments of importer to be put on hold until full payment of duties and taxes due, based on the foregoing resolution."

On March 30, 2001, respondent Commissioner issued Customs Memorandum Order (CMO) No. 6-2001 which included petitioner in the list of importers whose current and future shipments cannot be released by the Bureau of Customs until their liability for unpaid duties and taxes on previous importations are settled (Hold Order).[12]

On April 2, 2001, petitioner sent a letter to the Collector stating that the Customs Appraiser erred in the classification of the Shipments.[13]

On May 9, 2001, respondent Commissioner sent a letter to petitioner informing the latter that:[14]

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[11] Par. 16, JSFI, *Rollo*, p. 141; Exhibits "E-9" and "E-10", *Rollo*, pp. 282-283.
[12] Par. 9, JSFI, *Rollo*, p. 139.
[13] Par. 10, JSFI, *Rollo*, p. 139; Exhibit "F", *Rollo,* pp. 287-289.
[14] Par. 17, JSFI, *Rollo*, pp. 140-141; Exhibit "G", *Rollo,* p. 290.

> "xxx the BOC-SGS Appeals Committee has lost its jurisdiction to rule on your request considering that the written resolution thereof has already been forwarded and received by the Collection Division before receipt of your said request. Pursuant to CMO 12-93, Appeals Committee decisions are deemed final and executory upon receipt by the Collection Division of the final resolution.
>
> Said resolution adopted the appraiser's recommended value based on RO11-97/5-97 at US$1,999.58/MT and US$1,499/MT but less 20% allowance for being a third country, respectively, which was sourced from a previous Committee decision under CRF No. 028653, as well as the fact that the importer failed to submit any evidence to warrant a change of the questioned resolution.
>
> Considering the foregoing, you may avail of the protest remedy accorded to you under Section 2308 of the Tariff and Customs Code of the Philippines, as amended."

By letter dated January 31, 2002, petitioner elevated the matter to respondent Secretary of the Department of Finance for review of the action taken by the Bureau of Customs on its Shipments, pursuant to Section 38(l), Chapter 7, Book IV Executive Order No. 292.[15]

The request for review was referred back by the then Undersecretary and Chief of Staff Antonio Bernardo to the Bureau of Customs, which in turn referred it to the District Collector, MICP.[16]

Meanwhile, Deputy Commissioner Gil A. Valera sent a letter dated September 9, 2003 to petitioner informing the latter that he was directing the Legal Service to resolve the petition contained in the letter dated January 31, 2002 within thirty (30) days. He further stated that he will be recommending petitioner's delisting from the "Watch List" upon posting of a surety bond.[17]

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[15] Par. 18, JSFI, *Rollo*, p. 142; Exhibit "H", *Rollo,* pp. 291-298.
[16] Par. 21, JSFI, *Rollo*, p. 142; Customs Records, p. 54.
[17] Par. 19, JSFI, *Rollo*, p. 142; Customs Records, p. 151.

On December 21, 2004, petitioner received a letter dated September 30, 2004 from the District Collector informing the former that the Office of the Commissioner had already issued a resolution/decision[18] denying petitioner's request for review of the Committee's decision and petitioner's de-listing from the Hold Order List under CMO No. 6-2001.[19]

Hence, the instant *Petition for Review* filed on January 21, 2005.

Respondents filed their *Answer* on May 9, 2005.[20] After pre-trial, the parties filed their *Joint Stipulation of Facts and Issues* on July 8, 2005.[21]

Petitioner presented its Marketing Manager Wilfredo I. Madridejos and its counsel Manuel Ll. Dionaldo, as witnesses; and Exhibits "A" to "R", inclusive of their submarkings, as documentary evidence. The Court admitted all the evidence in Resolutions dated November 16, 2006 and April 13, 2007.[22]

Counsel for respondent manifested that she will not present any witness but presented documentary evidence marked as Exhibits "1" to "4", which were all admitted by the Court in a Resolution dated October 5, 2007.[23]

After both parties had filed their respective Memorandum, the case was submitted for decision on January 17, 2008.[24]

Hence, this decision.

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[18] *5th Indorsement* dated November 21, 2003.
[19] Exhibit "N", *Rollo,* p. 324; Customs Records, pp. 179-185.
[20] *Rollo*, pp. 86-100.
[21] *Rollo,* pp. 137-145.
[22] *Rollo,* pp. 374 and 429.
[23] *Rollo,* pp. 469-470.
[24] *Rollo,* p. 534.

The following are the issues jointly stipulated by the parties:

1. Whether petitioner is liable for additional duties and taxes for the First and Second Shipments of forged grinding balls amounting to P336,549.00 and P1,042,875.00, respectively;

2. Whether petitioner's inclusion in the Hold Order List under CMO 6-2001 has legal basis; and

3. Whether the subject upgraded valuation and assessment made by the Customs Appraiser and adopted by the BOC-SGS Appeals Committee is a protestable case within the purview of Sections 2308 and 2309, TCCP.

Before resolving the issues in the order stipulated, the Court shall first discuss the propriety of petitioner's course of action in pursuing its case.

In customs cases where a party is adversely affected by a decision of the Collector, such party must observe the procedure pertinently provided in the TCCP outlined as follows:

> "**Section 2308.** *Protest and Payment upon Protest in Civil Matters.* — When a ruling or decision of the Collector is made whereby liability for duties, fees, or other money charge is determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made.
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> **Section 2309.** *Protest Exclusive Remedy in Protestable Case.* — In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters correctible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof."

The foregoing procedure is based on the doctrine of exhaustion of administrative remedies, which requires that resort must first be made to the administrative authorities in cases falling under their jurisdiction to allow them to carry out their functions and discharge their responsibilities within the specialized areas of their competence. This is because the administrative agency concerned is in the best position to correct any previous error committed in its forum.[25]

According to respondent, petitioner's failure to exhaust the protest remedy available rendered the Collector's decision to demand the additional duties and taxes final and conclusive against it.

On the other hand, petitioner argues that its case is not protestable to the Collector because the decision came from the Committee which upheld the recommendation of the Customs Appraiser; the participation of the Collector was limited to merely demanding payment of the additional duties and taxes imposed by the Committee. Assuming that Section 2308 applies, petitioner argues that the decision had already become *"final and executory upon receipt by the Collection Division of the final resolution."* Finally, petitioner contends that the Collector cannot be expected to review, much less overturn, the decision of his superior, the Deputy Commissioner who happens to be the Chairman of the Committee.

The Court is not persuaded by petitioner's arguments.

When the tariff classification of the articles was changed, a higher valuation of the articles resulted which inevitably led to petitioner's liability for additional duties and taxes. As a party burdened by having to pay additional duties and taxes after the Shipments were released, petitioner became adversely affected by it. Clearly, petitioner's case is protestable. Accordingly,

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[25] *Angelita Morcal vs. Antonio Laviña, et al.*, G.R. No. 166753, November 29, 2005.

petitioner's only resort was to file a written protest setting forth his objections to the tariff classification in the decision, together with the reasons therefor.

However, petitioner admitted that it did not pay under protest pursuant to Section 2308.[26] For petitioner's failure to pay under protest -- and not for receipt by the Collection Division of the final resolution, the action of the Collector to collect the additional duties became final and conclusive upon petitioner.

When the Collector made the demand to petitioner, he in effect adopted the decision of the Committee on which his demand was based. Likewise, the argument that the Collector cannot review the decision of his superior, the Chairman of the Committee, is purely conjectural. By filing a written protest and paying the amount due with the Collector, petitioner would have been given an opportunity to be heard pursuant to Section 2312 which states:

> "**Section 2312.** *Decision or Action by Collector in Protest and Seizure Cases.* — When a protest in proper form is presented in a case where protest is required, the Collector shall issue an order for hearing within fifteen (15) days from receipt of the protest and hear the matter thus presented. Upon the termination of the hearing, the Collector shall render a decision within thirty (30) days, and if the protest is sustained, in whole or in part, he shall make the appropriate order, the entry reliquidated necessary.
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> xxx xxx xxx"

The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply Jc

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[26] Par. 30, JSFI, *Rollo*, p. 144.

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means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[27]

Considering that petitioner failed to file a written protest and accompany the same with payment of the amount due, petitioner cannot claim that it was denied an opportunity to be heard. Consequently, petitioner's liability for additional duties and taxes became final and conclusive upon him which justified his inclusion in the Hold Order List under CMO 6-2001.

Inasmuch as petitioner is liable to pay the additional duties for failure to protest the case in accordance with law, the resolution of the rest of the issues had become moot.

Besides, the Court does not have jurisdiction to entertain the instant petition. With respect to customs cases, the jurisdiction of the Court is provided under Section 7 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, which states:

> "**Section 7.** *Jurisdiction.* – The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> xxx xxx xxx
>
> (4) 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 in relation thereto, or other

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[27] *Haydee C. Casimiro vs. Filipino T. Tandog*, G.R. No. 146137, June 08, 2005.

matters arising under the Customs Law or other laws administered by the Bureau of Customs;

xxx xxx xxx"

In relation to the foregoing provision, Section 2402 of the TCCP provides:

"**Section 2402.** *Review by Court of Tax Appeals.* — The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations.

Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive."

Since there was no protest, the decision of the Collector could not be elevated to the Commissioner. In fact, respondent Commissioner denied petitioner's request to review the Collector's decision through his *5th Indorsement* dated November 21, 2003.[28] And the fact that the Commissioner did not act on the request to review the Collector's decision, as the Collector's decision has already become final and executory, it is clear that the Commissioner did not render any decision that is appealable to this Court, under Rule 4, Section 3(a)(4) of the Revised Rules of the Court of Tax Appeals. This Court, therefore, does not have jurisdiction over the present petition. The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.

[28] Customs Records, pp. 179-180.

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WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of P1,042,875.00 and P336,549.00, representing additional duties for the shipments covered by Entry Nos. C-26222-00 and C-8511-00, respectively, plus legal interest of six percent (6%) *per annum* from the date of demand up to finality of this Decision. Upon the finality of this Decision, the sum so awarded shall bear an interest at the rate of twelve percent (12%) *per annum* until its full satisfaction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Olga Palanca Enriquez
OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice

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