REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ORO MAURA SHIPPING LINES,
Petitioner,

- versus -

C.T.A. CASE NO. 6112

THE SECRETARY OF THE DEPARTMENT OF FINANCE,
Respondent.

Promulgated:

MAR 29 2001

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DECISION

This is an appeal from the decision of the then Secretary of Finance Edgardo B. Espiritu dated January 8, 1999 ordering the re-assessment of the value of Petitioner's vessel M/V "Haruna" based on the entered value thereof without allowance for depreciation. Petitioner requested for a reconsideration of the said decision but was denied with finality.

The antecedent facts follow.

On November 24, 1992, the Maritime Industry Authority (MARINA, for brevity) authorized the importation of one (1) unit vessel, M/V "HARUNA", ex: Shin Shu Maru No. 8 under a Bareboat Charter for a period of five (5) years from its actual delivery to the charterer. The original parties to this agreement were Haruna Maritime S.A., represented by Mr. Yoji Morinaga of Panama, and Mr. Guerrero G. Dajao, Proprietor and

Manager of GLORY SHIPPING LINES, the charterer. On December 29, 1992, the Department of Finance in its 1st Indorsement allowed the "temporary registration of foreign owned vessel under charter to the Philippine Nationals" x x x and the "release of the subject vessel may be allowed without the payment of duties and taxes, subject, however, to the conditions imposed under the letter of the Maritime Industry Authority dated November 24, 1992," and subject further to posting of a "bond in an amount equal to 150% of the duties, taxes and other charges due thereon conditioned x x x for the re-exportation thereof upon the termination of the charter period but not to extend beyond the year 1999 as provided for under the last paragraph of Sec. 1 of P.D. No. 1711, amending P.D. No. 760, otherwise, duties and taxes due thereon shall be collected x x x."

On March 16, 1993, herein charterer posted an Ordinary Re-Export Bond No. C (9) 121818 in the amount of P1,950,000.00 in compliance with the requirement imposed by the Department of Finance conditioned for the re-exportation of subject vessel within a period of one (1) year from March 22, 1993, or in case of default, to pay customs duty, tax and other charges. On March 22, 1993, the M/V "HARUNA" arrived in the Sub-Port of Mactan and Import Entry No. 120-93 was filed with a dutiable value of P6,171,092.00 and with an estimated customs duty and tax amounting to P1,296,710.00.

On May 10, 1994, or almost two (2) months after the re-export bond expired on March 22, 1994, Charterer Dajao sent a Letter of Guarantee to the Customs Collector guaranteeing "to renew our Re-Export Bond on vessel. M/V "HARUNA" on/or before May 20, 1994, otherwise duties and taxes on said vessel will be paid by Glory Shipping Lines, Inc. xxx."

On October 21, 1994, Petitioner applied with the MARINA to import the subject vessel M/V "HARUNA Glory" from Haruna Maritime S.A. of Panama, with a proposed acquisition cost of PHP1,100,000. Said request was granted by MARINA to Petitioner through a letter dated December 5, 1994, stating therein that the acquisition cost is considered reasonable.

On December 13, 1994, Kariton and Company, on behalf of Petitioner, requested the Department of Finance (DOF) to allow them to pay the duties and taxes due on the vessel with the information that said vessel was earlier entered duty and tax free under the Bareboat Charter Agreement. The Department of Finance then referred the letter of Kariton and Company to the Commissioner of Customs for appropriate action, per its 1st Indorsement dated December 13, 1994. The Commissioner of Customs, in turn, in his 2nd Indorsement dated December 14, 1994, referred the 1st Indorsement of the Department of Finance to the Collector of Customs, Port of Manila. On the basis of the foregoing indorsements, Import Entry No. 179260 was filed by Kariton and Company on behalf of Petitioner at the Port of Manila which accepted the declared value of the vessel at PHP1,100,000.00. Based on the said value, the assessed duties and taxes, as computed by the appraiser, amounted to PHP149,989.00 which was duly paid by Petitioner per BCOR No. 50245666 dated January 4, 1995.

On April 22, 1996, the Collector of Mactan sent a demand letter to the charterer demanding settlement of their liability in the amount of P 1,950,000.00 with the Bureau for failure to re-export the chartered vessel within the period specified in the re-export bond. Again, on June 21, 1996, the Customs Collector sent another demand letter reiterating the previous demand to pay the said amount representing unpaid customs duties, taxes and other charges. On March 10, 1997, another demand letter was sent to the charterer by the same Collector, this time with a handwritten annotation of Charterer Dajao made at the left lower portion with the markings "ALAN LIM c/o Oro Maura Shipping, Cagayan de Oro City." But on or about the month of April 1996, the Bureau of Customs, through an intelligence report, discovered that the subject vessel had been sold to Alan Lim of Oro Maura Shipping Lines in Cagayan de Oro City. Thus, on November 5, 1997, a demand letter was sent by Atty. Simplicio Jorgio, Chief of the Mactan Customs Law Division to Mr. Alan Lim of Oro Shipping Lines demanding payment of duties, taxes and other charges due on the vessel. For failure of Mr. Alan Lim to pay the duties, taxes and other charges, a Warrant of Seizure and Detention No. 17-98 was issued by the Mactan Customs Collector on August 10, 1998, against the vessel for violation of Section 2530 (1-3, 4 and 5) of the Tariff and Customs Code of the Philippines.

On September 23, 1998, a decision was rendered by the Collector of Customs, Sub-port of Mactan forfeiting the vessel in favor of the Government of the Republic of the Philippines. The decision of forfeiture was appealed by Petitioner to the District Collector, Port of Cebu who, on December 1, 1998, reversed the decision of the Collector, Sub-port of Mactan.

On December 14, 1998, the Commissioner of Customs found the decision of the District Collector, Port of Cebu to be meritorious and recommended its approval to the Respondent. On January 8, 1999, herein Respondent rendered the questioned decision, the dispositive portion of which states:

"Upon review of the records of the case we find the decision under review to be in accordance with the evidence presented. Accordingly, said decision is hereby affirmed pursuant to 2313 of the Tariff and Customs Code, as amended, as recommended by that Bureau. However, a reassessment of the value of the vessel should be made based on the entered value thereof without allowance for depreciation in accordance with the ruling of this Department contained in a letter dated 28 February 1991, copy attached, mandating in effect the application of Sections 204 and 205 of the Tariff and Customs Code, as amended."

Through a letter dated April 6, 2000, Respondent, through his Assistant Secretary, denied with finality Petitioner's request for a reconsideration of the above decision.

Hence, the case before Us.

In his Answer filed on August 3, 2000, Respondent raised the following Special and Affirmative Defenses:

VI

"The assailed decision was rendered within the 30-day reglementary period. Counting from respondent's receipt of the case record on December 17, 1998, he had until January 16, 2000 to render his decision. Clearly, when respondent promulgated the questioned decision on January 8, 1999, only 22 days had elapsed or 8 days ahead of its due date.

VII

A writing much more an official decision is presumed to be truly dated. In the absence of clear and convincing evidence to the contrary, the date appearing on the face of such document shall be deemed to be the precise time of its execution or rendition. And such presumption cannot be defeated by bare assertions much less baseless speculations (Section 3[a], Rule 131, Rules of Court).

VIII

Public officers are entitled to the presumption of regularity in the performance of their official duties. Absent any clear controverting proofs, the general inference is that an official act has been rightly and duly discharged. Thus, any person who may wish to impugn such legal presumption has the burden of proof and must show affirmatively that a convincing reason exists to support the challenge that the public officer has not so acted in the regular manner (Ibid., pars. (l) and (m); US v. Escalante, 36 Phil. 743 [1917]).

IX

There is nothing on record which remotely suggests that the actual promulgation, release and receipt of the questioned decision all happened at one time. On the contrary, the dates appearing on the face of the decision say otherwise. It was signed and released by respondent on January 8, 1999. On the other hand, it was received by the Commissioner of Customs on March 17, 1999.

X

Decisions are deemed officially rendered at the time they are signed and promulgated. And absent any proof to the contrary, the timeliness of such rendition must be ascertained solely on what is indicated on the face of the decisions. It cannot be reckoned with some other dates much less the date affected parties are actually served or notified. Otherwise, no decision will ever be promulgated within the prescribed period of time.

XI

In all cases involving the assessment and collection of customs duties, the final review authority rests upon the Secretary of Finance. And in the exercise of such authority, he may at anytime direct the re-assessment of any dutiable articles and order the collection of deficiency duties. Thus:

> Section 2315. *Supervisory Authority of Commissioner and of Secretary of Finance in Certain Cases.* - If in any case involving the assessment of duties, the Collector renders a decision adverse to the government, such decision shall automatically be elevated to, and reviewed by, the Commissioner; and if the Collector's decision would be affirmed by the Commissioner, such decision shall be *automatically* elevated to,

> and be *finally* reviewed by, the Secretary of Finance. (Italics supplied)
>
> (Tariff and Customs Code of the Philippines)

XII

The use of depreciated value as basis for the assessment of customs duties is irregular and, therefore, invalid. The law expressly requires that the dutiable value of an imported article shall be based on either its home consumption value or its wholesale price in the country of origin. The duties due thereon cannot be determined simply from the arbitrary calculation of MARINA or any other governmental agency. Thus:

> Section 201. *Basis of Dutiable Value* - The dutiable value of an imported article subject to an ad valorem rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted by adding the following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods.
>
> x x x
>
> Where the Commissioner of Customs has reason to doubt the truth or accuracy of the declaration or particulars or documents provided in support of declared value of the importation, he may require the importer to give further explanation thereof and to submit additional documents or other evidence to show that the declared value represents the total amount paid or payable for the imported goods.
>
> If the dutiable value cannot be determined under any of the preceding methods described above, it shall be determined by using other reasonable means consistent with the principles and general provisions of GATT 1994, the agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade as contained in the Uruguay Round Final Act, and on the basis of data available in the Philippines.
>
> The correct dutiable value of the imported goods referred to above shall be ascertained by the Commissioner of Customs from reports of revenue or commercial attaches or other Philippine

> diplomatic officers and from such other sources of information as may be available to the Bureau of Customs. Such values shall be established and published by the Commissioner of Customs from time to time, and such values shall be binding upon the importers and the Bureau of Customs until changed and new value or values are similarly established and published.

(Ibid.)

XIII

Because of such irregular valuation, the government failed to collect the true and full amount due on petitioner's importation. It therefore deprived the State of the much needed revenue to support its operations. Under such circumstances, respondent is not only justified but even mandated by law to effect re-assessment and collection of deficiency duties against petitioner. Thus:

> Section 2503. *Undervaluation, Misclassification and Misdeclaration in Entry* - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten per cent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten per cent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten per cent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference. (Italics supplied)

(Sec. 2503, Ibid.)

XIV

Petitioner's reliance in Sections 1407 and 1603 of the Tariff and Customs Code is misplaced. Both provisions are not a limitation on the authority of either the Commissioner of Customs or the Secretary of Finance to assess and collect deficiency duties. Rather, they are restrictions upon importers which bar them to request a re-appraisal of duties for purposes of abatement or refund as well as upon the Collector of Customs restraining him to unilaterally modify or alter previously approved appraisals. Simply put, such appraisal, classification, return and liquidation of customs duties are final and binding only upon the parties thereto.

XV

Moreover, it is clear from Section 1202 of the Tariff and Customs Code that in case of taxable article coming from abroad, importation is not terminated until the duties, taxes and other changes (sic) due thereon have been paid or secured. This must be so since duties and other charges on all importation constitute personal debt and lien which can be enforced until those taxes and other charges are fully paid (ibid., Section 1204).

XVI

It is settled that in the performance of governmental functions, the State is not bound by the neglect or mistake of its agents and officers. And nowhere is this principle more true than in the field of taxation for taxes are the lifeblood of the government and so should be collected without unnecessary hindrance (Cf. Philex Mining Corp. v. CIR, 294 SCRA 687 [1998]).

Both parties agreed that the issues involved in this case are purely legal, thus:

1. Whether or not the assailed decision was rendered within the reglementary period;

2. Whether or not the Respondent has the authority to order the questioned re-assessment;

3. Whether or not Respondent's re-assessment is valid and legal.

As to whether or not the 4th Indorsement dated January 8, 1999 which was released and received by the Commissioner of Customs only on March 17, 1999 was issued beyond the thirty (30) day period provided for under Section 2313 of the Tariff and Customs Code of the Philippines (TCCP), We rule in the negative.

Under the aforesaid provision of law relied upon by Petitioner, "if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory."

Petitioner insists that for purposes of counting the 30-day period , the date in the 4th Indorsement or January 8, 1999 should not be considered but the date when the said indorsement was officially released by the office of the Secretary of Finance on March 17, 1999. According to Petitioner, it is apparent that the 4th Indorsement was intentionally dated January 8, 1999 to make it appear that the ruling of the Secretary of Finance was timely rendered.

This Court cannot agree with Petitioner in the absence of any proof supporting its claim. The presumption is that official duty had been regularly performed [Section 3(m), Rule 131, Rules of Court). The document in question clearly indicates that the decision was rendered on January 8, 1999 and there is no basis for Us to conclude that the same was merely antedated to prevent the decision of the Commissioner or the District Collector from becoming final. As correctly pointed out by Respondent, there is nothing on record which remotely suggests that the actual promulgation, release and receipt of the questioned decision all happened on the same day.

We shall discuss the second and third issues jointly as they are interrelated.

The supervisory authority of the Secretary of Finance is clearly provided under Section 2315 of the TCCP, thus:

> **Section 2315.** ***Supervisory Authority of Commissioner and of Secretary of Finance in Certain Cases.*** - If in any case involving the assessment of duties, the Collector renders a decision adverse to the government, such decision shall automatically be elevated to, and reviewed by, the Commissioner; and if the Collector's decision would be affirmed by the Commissioner, such decision shall be automatically elevated to, and be finally reviewed by, the Secretary of Finance: Provided, however, That if within thirty (30) days from receipt of the record of the case by the Commissioner or by the Secretary of Finance, as the case may be, no decision is rendered by either of them, the decision under review shall become final and executory. Provided, further, That any party aggrieved by either the decision of the Commissioner or of the Secretary of Finance may appeal to the Court of Tax Appeals within thirty (30) days from receipt of a copy of such decision.
>
> x x x

It bears stressing, however, that the same is not without limitations for Sections 1407 and 1603 of the same Code provide:

> **Section 1407.** ***Readjustment of Appraisal, Classification or Return.*** - Such appraisal, classification or return as finally passed upon and approved or modified by the Collector shall not be altered or modified in any manner, except:
>
> a. **Within one year after payment of the duties**, upon statement of error in conformity with section seventeen hundred and seven hereof, approved by the Collector.
>
> b. Within fifteen days after such payment upon request for reappraisal and/or reclassification addressed to the Commissioner by the Collector, if the appraisal and/or classification is deemed to be low.

c. Upon request for reappraisal and/or reclassification, in the form of a timely protest addressed to the Collector by the interested party if the latter should be dissatisfied with the appraisal or return.

Section 1603. ***Finality of Liquidation.*** - When articles been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of one year, from the date of the final payment of duties, in the absence of fraud or protest, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.

Verily under the foregoing provisions, an appraisal made by the Collector can be altered or modified only within one year from payment of the duties. It is only when there is fraud or protest or when the import entry was merely tentative that settlement of duties will not attain finality. All these circumstances are wanting in the instant case.

We do not concur with Respondent's assertion that Sections 1407 and 1603 are restrictions applicable only to the importers which bar them to request a re-appraisal of duties for purposes of abatement or refund as well as upon the Collector of Customs restraining him to unilaterally modify or alter previously approved appraisals. The law clearly provides that the same shall be final and conclusive <u>upon all parties</u>. If it was meant to bind only the importer and the Collector of Customs, it could have easily provided so. Moreover, if there is no such limitation under the law, then settlements of duties, even in the absence of fraud, can never attain finality, to the prejudice of the importer who can be perpetually assessed if the duties paid are later on found to be erroneous.

We find Sections 1407 and 1603 of the Tariff and Customs Code of the Philippines to be clear and need no further interpretation.

When the law is clear it is not susceptible of interpretation. It must be applied regardless of who may be affected **(Nepomuceno vs. Rehabilitation Finance Corporation, 110 Phil. 42).**

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Accordingly, the 4th Indorsement dated January 8, 1999 is hereby **SET ASIDE** and the decision of the District Collector, Port of Cebu dated December 1, 1998 in CEBU SI No. 16-98, which was affirmed by the Commissioner of Customs ordering the release of M/V HARUNA in favor of the Petitioner, ORO MAURA SHIPPING LINES, in C/A No. 17-98 is hereby **UPHELD**.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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