REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNIMEX MICRO-ELECTRONICS, GmBH,
Petitioner,

- versus -

C.T.A. CASE NO. 6329

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:

SEP 19 2002

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DECISION

This petition is for the revival of the judgment rendered by this court in favor of the petitioner on June 15, 1992 and which became final and executory on July 20, 1992.

A decision was promulgated by this court on June 15, 1992 in the case entitled UNIMEX MICRO-ELECTRONICS Gm BH versus COMMISSIONER OF CUSTOMS, CTA CASE NO. 4317, involving herein petitioner and respondent, the dispositive portion of which, reads:

> "WHEREFORE, the decree of forfeiture of respondent Commissioner of Customs is hereby reversed and the subject importation is hereby ordered released to petitioner subject to the condition that the correct duties, taxes, fees and other charges thereon be paid to the Bureau of Customs based on the actual quantity and condition of the shipments at the time of the filing of the corresponding import entry in compliance with this decision and further subject to the presentation of the Central Bank Release Certificate."

The subject importation ordered to be released by this court upon payment of the proper duties, taxes, fees and other charges pertained to one (1) forty foot container and 171 cartons of Atari game computers, cartridges, duplicators, superchargers, expanders,

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selectors, remote controllers and accessories allegedly amounting to Five Hundred Fifty Thousand U.S. Dollars (US $550,000.00). Said decision became final and executory on July 20, 1992. Petitioner avers that for reasons known only to its counsel at that time, no Writ of Execution for the enforcement of said decision was secured. Nevertheless, the instant action for revival of judgment was timely filed. Petitioner prays for the immediate release of the subject matter of the shipment covered in the original decision upon payment of the corresponding taxes, fees and other charges thereon to the respondent based on the actual quantity and the condition of the shipment at the time of the filing of the proper import entry and upon the surrender of the proper Central Bank Release Certificate, if still obtainable at the present time. In the event that the subject matter of the shipment is no longer capable of being released to the petitioner, it is being prayed that the respondent must pay the value of the shipment based on the said amount plus interest at the legal rate from the time of the date of entry of the original decision until it is fully satisfied or by substitution or replacement in accordance to terms which will also consider the actual commercial value at the time of entry of judgment of the shipment and the prevailing legal interest of 12%. Further, in its memorandum, petitioner prayed that the respondent be ordered to pay the actual costs and expenses incurred by petitioner during the period of seventeen (17) years.

The controversial issues which should be determined by this court are:

(1) Whether or not the government, through the respondent Commissioner of Customs, is liable to pay the commercial value of the subject shipment less of

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taxes, duties, fees and other charges. If in the affirmative, with what method of payment;

(2) Whether or not the government is liable to pay interest; and

(3) Whether or not the government is also liable to pay for damages.

The Bureau of Customs is an unincorporated government agency without any separate juridical personality of its own. Along with the Bureau of Internal Revenue, it is invested with an inherent power of sovereignty, namely, taxation. As an agency, the Bureau of Customs performs the governmental function of collecting revenues which is definitely not a proprietary function.[1] It is headed by the Commissioner of Customs, the respondent herein. The general principle is that "the state may not be sued without its consent".[2] Hence, in the case at bar, it is crucial to determine if the State is the real party in interest, that is, if the claim if proved, will be a direct liability of the State and not merely of the Commissioner of Customs, the officer impleaded.

The facts obtaining in this case are by no means simple as to automatically adopt the principle of immunity of the State from suit.

Petitioner originally sought a judicial remedy for the release of the goods seized by the Bureau of Customs due to the misdeclaration in the cargo manifest. This court then ordered the release of the seized goods after payment by the petitioner of the corresponding taxes, duties, fees and other charges.[3] The petitioner, for reasons known only to its Counsel of Record at that time, failed to secure the necessary Writ of

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[1] Farolan, Jr. vs. Court of Tax Appeals, 217 SCRA 298.
[2] Sec. 3, Article XVI, General Provisions, 1987 Constitution.
[3] Decision, Unimex Micro-Electronics GmBH vs. Commissioner of Customs, CTA Case No. 4317

Execution for the enforcement of the decision (*Petition for Review, par. 7*). However, in its memorandum, petitioner claims that it was not able to enforce the decision of this court "since each and every item in the shipment could not be found or located within the premises of the Bureau of Customs at that time (*CTA records, page 101*). But in the testimony of Mr. Stephen Finta, Jr.,[4] the manager of Unimex and one of its shareholders, he stated that:

> Q. Now, at the time when the decision was rendered by the Honorable Court of Tax Appeals in June 1992 will you please inform this Honorable Court if you were able to find the remaining portion of the fifty percent (50%) of goods in the possession of the Bureau of Customs, Mr. Witness?
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> A. Yes, at that time I went with our consultant and our lawyer at that time, the company ACCRA, and we had a meeting with the Customs' Department bringing this original decision and they pointed out that they didn't really know where it was and that I should be mindful, they were very diplomatic in pointing this out, that if I were then to immediately go for the execution that they would resist that and it would take at least 3, 4, or 5 years for me to bring that further. I was told that even if I then won the case it would be difficult to get any compensation from the government and we tended to believe that. We were also told that companies like Evergreen and Don Tim who have Reinsurance Protection Plans with global reinsurance companies would be in a much better position to provide us with compensation and our first line should be against them. <u>And so following the advised (sic) of my Philippine lawyers at that time ACCRA, we proceeded after Evergreen and Don Tim who in fact with (sic) the people who deliberately mis-declared the goods in the first place as was proven in their (sic) earlier case, Sir</u>. (Emphasis ours.)

It therefore appears that petitioner knew the reason why no Writ of Execution was secured by petitioner's counsel at that time albeit a wrong legal action. Because the Supreme Court held that:

> "It is now well-settled in this jurisdiction, that when after judgment has been rendered and the latter has become final, facts and circumstances

[4] TSN, January 30, 2002, pages 53 & 54.

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> transpire which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and the facts." (Underscoring supplied.) (*Dela Costa vs. Cleofas, 67 Phil 686; City of Butuan vs. Ortiz, 113 Phil 636; Gabaya vs. Mendoza, 113 SCRA 400; Balila vs. IAC, 155 SCRA 262*).

During the hearing of this case on January 30, 2002, petitioner's witness, Mr. Stephen Finta, admitted that it was not able to comply with the conditions set forth by the court in its decision dated June 15, 1992 in view of the fact that the goods were no longer in existence at the time the said decision was rendered, thus:

> Q. Mr. Witness, the decision of this Honorable Court in 1992 made mentioned (sic) of several requirements which you are supposed to undertake primary among which is the securing of a clearance from the Central Bank, the payment of taxes and duties, the Central Bank Release Certificate and the payment of taxes. Were you able to undertake these measures which were conditioned for the enforcement of the decision in 1992, were you able to do these things?
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> A. We were not able. We were frustrated because we will have to apply an amount. At that time our legal counsels said since we are ready to pay the customs and excise (sic) get this (sic) receipts and do that. The main thing is that we have to first establish what is there. So we could then and apply the customs excise to the value of the goods which were there. But, then the customs told us that without putting into writing which I have requested that they didn't know if the goods was (sic) still there or anything was left and that would be frustration (sic) anyhow it may (sic) absolutely no sense for us to go and apply and pay taxes on goods that we did not find and we had to first get an inventory in 1992, the last inventory was made in 1988. So, we were unable, your Honors, to comply with have been a normal procedure if the goods were there, Sir.
> (*TSN, January 30, 2002, pages 84 & 85*).

Considering that the goods had allegedly disappeared at the time the decision was rendered in 1992, petitioner's counsel should have requested this court to modify or alter the same to harmonize with the facts already prevailing then. Apparently, the course of action taken by the petitioner then was to file a case against Evergreen and Don Tim without requesting for a Writ of Execution or modification of the judgment.

In the instant action for revival of judgment, petitioner moved not only that the subject shipment be released but that in the event that it can no longer be capable of being released, the actual value of the shipment plus interest be paid by the respondent as well as damages.

The action for revival of judgment is a new and independent action wherein the cause of action is the judgment itself and not the merits of the action upon which the judgment sought to be enforced is rendered. Its purpose is not to re-examine and re-try the issues already decided but only to revive the judgment. (*Filipinas Investment and Finance Corporation vs. Intermediate Appellate Court, 179 SCRA 728*). The Supreme Court also declared[5] that an action of revival is no more than a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five years without its being executed upon motion of the prevailing party. It is not intended to reopen any issue affecting the merits of the judgment debtor's case nor the propriety or correctness of the first judgment. As a rule, only matters of jurisdiction and those arising after the finality of the first judgment may be raised in the new action.

Thus, taking into account the peculiar circumstances after the finality of the first judgment in this case, more particularly the loss of the subject goods, it is but only proper to tackle the issues raised by the petitioner.

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[5] Phil. Reconstruction Corp., Inc. vs. Pablo Aparente, 45 SCRA 217).

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Anent the first issue, it is undisputed that the goods subject of this case can no longer be found in the warehouses that are under the Auction and Cargo Dispose Division of the Bureau of Customs (*TSN, January 30, 2002, pages 11 & 12*). As testified to by the person who conducted the inventory, the subject articles are nowhere to be found (*ibid, pages 21-23*). There is no iota of doubt that the officers and employees of the Bureau of Customs involved were negligent in the performance of their duties. Section 604 of the Tariff and Customs Code, provides:

> The Bureau of Customs shall, for customs purposes, have exclusive control, direction and management of customhouses, warehouses, offices, wharves and other premises in the respective ports of entry, in all cases without prejudice to the general police powers of the city or municipality and the Philippine Coast Guard in the exercise of its functions wherein such premises are situated.

For as long as the goods are under the Bureau of Customs control as in the case at bar, the Bureau of Customs is responsible for the safekeeping of the same. It should have taken adequate measures to preserve the said goods. If the goods are lost while under its custody, the Bureau of Customs should be made liable therefor.

Stated otherwise, with the existence of circumstances unique and peculiar in this case and in the interest of justice and fair play, the rule on immunity from suit of the Bureau of Customs should not apply. For it is glaringly evident that the goods were lost while in its custody to the great detriment of herein petitioner. In the case of *Mison vs. Commission on Audit* (187 SCRA 445), the Supreme Court upheld the decision of the Commissioner who ordered the Bureau of Customs to pay a vessel owner the value of the vessel which had been taken under illegal custody by the Bureau and sank while under its

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custody. Moreover, no less than the Constitution mandates that all public officers and employees should serve with responsibility, integrity and efficiency.[6] Were it not for the negligence of the Bureau's officers and employees, the goods would still be in its warehouse. Negligence is defined[7] as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. There is negligence when there is a breach of duty, or failure to perform an obligation xxx (*Juan vs. Arias, 72 SCRA 410*).

In view of the negligence of the Bureau of Customs officers and employees and pursuant to the principle of command responsibility, the Commissioner of Customs is liable to pay the value of the lost shipment at that time net of the due taxes, duties, fees and other charges. Based on Sales Invoice No. UX-502 dated May 28, 1985 issued by Unimex (*Exhibit C, CTA Case No. 4317*), the value of the subject goods amounted to Deutsche Mark (DM)1,310,372.00, detailed hereunder:

			Deutsche Mark (DM)	
		Quantity	Unit Price	Amount
SP 280	COMPUTER Duplicator for VC54 COMMODORE/ATARI	7,644	96.00	733,824.00
SP 2801	COMPUTER Cartridges 4K EPROM (in 3-packs)	21,708	16.00	347,328.00
SP 2802	COMPUTER Cartridges 8K EPROM (single-rack)	3,100	27.00	83,700.00
	(1,097,050.-)		sub-total	1,164,852.00
	Gift Boxes: "UNIMEX" brand, silver/blue free of charge			
	Master COMPUTER cartridges sent free of charge via Air Freight			

[6] Ibay vs. Lim, 340 SCRA 107.
[7] Philippine Law Dictionary, 3rd Ed., page 623.

SP 270	Remote Controller, set (2) plus console (VC64/ATARI)	500	86.00	43,000.00
SP 3000	COMPUTER-Cartridges Selector (8) Game Brain	400	49.80	19,920.00
SR-3000	Supercharger-ATARI COMPUTER Expander	400	89.50	35,800.00
SR-3000	COMPUTER Program Series (Cassettes, mixed, as per sample)	3,000	15.60	46,800.00
		sub-total		145,520.00
			Grand Total	1,310,372.00

Per the accompanying packing list dated May 28, 1985 prepared by Unimex (*Exhibit D, CTA Case No. 4317*), the above goods were packed in 1,230 cartons, as follows:

CARTON NO.	NO. OF CARTONS	CONTENTS Units	Description
B-001 - B-124	124	1872 SP-280	COMPUTER DUPLICATOR
		8424 SP-2801	4K EPROM Cartridge
C-001 - C-076	76	1596 SP-280	COMPUTER DUPLICATOR
		760 SP-2802	8K EPROM Cartridge
D-001 - D-107	107	428 SP-280	COMPUTER DUPLICATOR
E-001 - E-009	9	2160 SP-2802	8K EPROM Cartridge
F-001 - F-003	3	53 SP-280	COMPUTER DUPLICATOR
H-001	1	130 SP-2802	8K EPROM Cartridge
M-001 - M-012	12	271 SP-280	COMPUTER DUPLICATOR
001 - 625	625	2500 SP-280	COMPUTER DUPLICATOR
001 - 013	13	3900 SP-2801	4K EPROM Cartridge
I-001 - I-011	11	44 SP-280	COMPUTER DUPLICATOR
K-001 - K-020	20	5856 SP-2801	4K EPROM Cartridge
L-001	1	50 SP-2802	8K EPROM Cartridge
AA-01 - AA-98	98	784 SP-280	COMPUTER DUPLICATOR
		3528 SP-2801	4K EPROM Cartridge
BB-01 - BB-12	12	96 SP-280	COMPUTER DUPLICATOR
A-001 - A-030	30	SP-270	Remote Controller, set (2) plus Console (VC64/ATARI)
A-100 - A-118	19	SP-300	COMPUTER-Cartridges Selectro (8) Game Brain
A-056 - A-070	15	SR-3000	Supercharger-ATARI COMPUTER
A-071 - A-099	29		Expander
A-031 - A-055	25		COMPUTER Program Series

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(Cassettes, mixed, as per sample)

1,230

The number of cartons and the corresponding description tallied with those found in the bill of lading from Evergreen Marine Corporation (*Exhibit E, CTA Case No. 4317*) and inward foreign cargo manifest prepared by Evergreen's shipping agent Don Tim Shipping Corporation (*Exhibit H, CTA Case No. 4317*). However, the total number of cartons shown in the said documents was 1,271 instead of 1,230 due to an error made by Evergreen in adding up the number of cartons shown on page 2 of the bill of lading (total shown was 1,100 instead of 1,059 only).

Considering that the US dollar rate of the Deutsche Mark in July, 1985 was .3563US$ (*Reference Exchange Rate Bulletin, Treasury, Central Bank of the Philippines*), the value of the subject shipment at the time of the arrival thereof in Manila on July 9, 1985 based on the evidence submitted by the petitioner in CTA Case No. 4317, was US$466,885.54 (DM 1,310,372.00 x .3563 US$) with the peso equivalent of P8,675,200.22 (US466,885.54 x P18.5810). However, the correct taxes, duties, fees and other charges at that time on the importation involved shall be deducted from this amount.

The execution shall not be directly against the government but against the items or properties which have been seized or forfeited by the government. That means, the payment shall be taken from the proceeds of the sale or sales of such seized or forfeited articles. This payment by substitution or replacement of goods has long been supported by the Supreme Court, viz:

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> "In the execution of this decision the Provincial Government of Sorsogon is expected to immediately pay as directed. Should any further delays be encountered, the trial court is directed to seize any of the patrimonial property or cash savings of the province in the amount necessary to implement this decision." (*Provincial Government of Sorsogon vs. Vda. De Villaroya, 153 SCRA 291*).

Proceeding now to the second issue of whether or not the government is liable to pay interest, we rule in the negative.

Petitioner cited as its basis for the right to payment of interest, Article 2209 of the New Civil Code, thus:

> Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent *per annum*.

This court does not agree that petitioner is entitled to the payment of legal interest.

Interest may be paid either as compensation for the use of money (monetary interest) referred to in Article 1956 of the New Civil Code or as damages (compensatory interest) under Article 2209 above cited. As clearly provided under Section 2209, interest is demandable if: a) there is a monetary obligation and b) debtor incurs in delay.

This case does not involve a monetary obligation to be covered by Article 2209. There is no dispute that this case was originally filed questioning the seizure of the shipment by the Bureau of Customs. Our decision subject of this action for revival did not refer to any monetary obligation by the respondent towards the petitioner. In fact, if there was any monetary obligation mentioned, it referred to the obligation of the

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petitioner to pay the correct taxes, duties, fees and other charges before the release of the goods can be had. In one case, the Supreme Court held[8] that:

> "In a comprehensive sense, the term 'debt' embraces not merely money due by contract, but whatever one is bound to render to another, either for contract or the requirement of the law, such as a tax where the law imposes personal liability therefor."

Therefore, the government was never a debtor to the petitioner in order that Section 2209 could apply. Nor was it in default for there was no monetary obligation to pay in the first place. There is default after demand is made either judicially or extrajudicially. In other words, for interest to be demandable under Article 2209, there should be a monetary obligation and debtor was in default. And there is default only after demand has been made either judicially or extrajudicially against the debtor.

In the instant case, since respondent was never under monetary obligation to the petitioner, no demand could be made either judicially or extrajudicially. Parallel thereto, there could be no default. The right to interest arises only by virtue of a contract or by virtue of damages for delay or failure to pay the principal on which interest is demanded, at the time when the debtor is obliged to make such payment.[9]

To further justify its demand for the payment of legal interest at the rate of 12% per annum, petitioner relied upon the case of Tio Khe Chio versus Court of Appeals[10] which held that the adjusted rate mentioned in the circular (Circular No. 416 of the Central Bank) refers only to loans or forbearances of money, goods or credits and court

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[8] Sambrano vs. CTA, 101 Phil 1.
[9] Barretto vs. Santa Marina and "La Insular" 37 Phil 568.
[10] G.R. No. 76101-02, September 30, 1991, 202 SCRA 119

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judgments thereon but not to court judgments for damages arising from injury to persons and loss of property which does not involve a loan.

Indeed, we concur.

There is no doubt that the interest referred to in the said circular is the interest by way of compensation for the use of money. In fact, this had been clearly enunciated by the Supreme Court when it held[11] that "the judgments spoken of and referred to in CB Circular 416 are judgments in litigations involving loans or forbearance of any money, goods or credits. Any other kind of monetary judgment which has nothing to do with, nor involving loans or forbearance of any money, goods or credits does not fall within the coverage of the said law for it is not within the ambit of the authority granted to the Central Bank." So the instances where the interest under the CB Circular No. 416 (12% per annum) applies are: (1) loans, (2) forbearances of money, goods or credits, or (3) court judgments involving loans or forbearances of money, goods or credits.

As already discussed, petitioner originally filed a petition questioning the validity of the forfeiture of its shipment. To emphasize, it was not a claim to recover a loan. A loan is a contract whereby one of the parties delivers to another money or other consumable thing, upon the condition that same amount of same kind and quality shall be paid (*Article 1933, New Civil Code*). Our judgment categorically did not mention any monetary obligation except on the part of the petitioner before the goods should be released. And even if we now require that petitioner be compensated for the lost goods,

[11] Reformina, et al vs. Hon. Tomol, Jr., et al. 139 SCRA 260.

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still, the same will be a monetary judgment which has nothing to do with, nor involving loans or forbearance of any money, goods or credits.

We do not subscribe with the view of the petitioner that the relationship between the Bureau of Customs and petitioner involves a forbearance on goods. "Forbearance" means delay in enforcing rights, the act by which a creditor waits for the payment of a debt due him by the debtor after it becomes due.[12] Forbearance is refraining from doing something that one has a legal right to do. It is the giving of further time for repayment of obligation or agreement not to enforce claim at its due date.[13] In *Eastern Shipping Lines, Inc. vs. Court of Appeals* (234 SCRA 78), the Supreme Court observed that a "forbearance" in the context of usury law is a "contractual obligation of lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay a loan or debt then due and payable."

It cannot be over emphasized that this case does not involve a loan. It follows that there is nothing to "forbear". Petitioner has apparently misunderstood the concept of interest provided by law and jurisprudence. Cases beyond the scope of the said CB circular are governed by Article 2209 of the Civil Code, which considers interest a form of indemnity for the delay in the performance of an obligation.[14] And we have extensively discussed that Article 2209 is not applicable in this case for the government

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[12] Words & Phrases, Permanent Ed., Vol. 17, page 231.
[13] Black's Law Dictionary, 6th Ed., page 644.
[14] Crismina Garments, Inc. vs. CA., 304 SCRA 356.

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had never been a debtor to the petitioner. A debtor is one who owes a debt to another who is called the creditor; one who may be compelled to pay a claim or demand.[15]

Finally, relative to the issue of whether or not the government is liable to pay damages, mainly comprising of the expenses incurred by petitioner in its seventeen-year effort to reclaim its goods in the amount of U.S.$6,558,791.00, we are constrained to deny the same.

It would not be amiss to point out that there would not have been a seizure if not for the misdeclaration in the cargo manifest. Although it was not petitioner that made the misdeclaration, it was petitioner that entered into a contract with Evergreen. And whether or not petitioner was aware that Evergreen contracted a sub-agent, respondent had no hand in it. Nor was it respondent's fault that petitioner had the misfortune to hire non-reliable consultant and lawyer.[16] Moreover, it must be stressed that the case has originally been decided in 1992 but petitioner or its counsel did not secure a writ of execution for the enforcement thereof. If the requirements of the court seemed impossible to carry out at that time, petitioner should have requested for a modification of such judgment to conform with the situation already existing then. The action for revival was only filed in 2001. Granting that respondent invalidly seized the subject goods, however, we have already decided in favor of the petitioner way back in 1992. In sum, it is unreasonable for the petitioner to put the blame on the respondent and require him to pay for the expenses incurred in seventeen years. This court really finds no legal basis for the said demand.

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[15] Black Law's Dictionary, 6th Ed., page 404.
[16] TSN, January 30, 2002, pages 66-72.

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WHEREFORE, premises considered, the instant petition is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **PAY** the petitioner the amount of P8,675,200.22 representing the commercial value of the shipment at the time of importation subject, however, to the payment of the proper taxes, duties, fees and other charges thereon. The payment shall be taken from the sale or sales of the goods or properties seized or forfeited by the Bureau of Customs.

SO ORDERED.

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

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