REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITIBANK, N.A. and INVESTORS FINANCE, INC.,
Petitioners,

-versus- C.T.A. CASE NO. 3188

COMMISSIONER OF CUSTOMS,
Respondent. 4/1/93

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D E C I S I O N

This case is interrelated, having the same facts and similar issues, to the consolidated cases of ABS-CBN in CTA Case Nos. 3162, 3163, 3164, 3165, 3166 and 3167 which was already decided by this Court on May 15, 1992. Herein petitioners were, in fact, mor gagees-intervenors in the seizure proceedings o the ABS-CBN cases. On appeal to this Court, however, petitioners filed this separate suit against the respondent Commissioner of Customs on January 12, 1981.

Petitioner Citibank, N.A. (formerly known as First National City Bank) is a foreign banking institution duly licensed to engage in business in the Philippines, while co-petitioner Investors Finance, Inc., (formerly known as FNCB Finance, Inc.), doing business under the name and style "FNCB Finance", is a corporation duly organized and existing under and in accordance with the laws of the Philippines.

On various dates from December 29, 1970, the petitioners extended credit accomodation to the ABS-CBN Broadcasting Corporation (ABS-CBN for brevity) formerly known as the Bolinao Electronics Corporation, a corporation duly organized and existing under and by virtue of the laws of the Philippines, engaged in the business of radio and television broadcasting.

The payment and performance of the credit accomodation extended by the petitioners to ABS-CBN, including any and all obligations for which ABS-CBN may be bound to the petitioners, are secured by the Chattel Mortgage executed by ABS-CBN on December 29, 1970 in favor of petitioner Citibank, N.A. over the colored television equipment and accounts receivables enumerated and described in the schedule attached to the mortgage document as Annex "A" thereof, and by the Chattel Mortgage executed and delivered by ABS-CBN on December 8, 1972, in favor of the petitioners over the radio and television equipment, spare parts, accessories and other personal properties enumerated and described in the schedule attached to the mortgage document as Annex "A" thereof (see Joint Stipulation of Facts with annexes, Annex "A", pp. 18-20).

Inasmuch as the case at bar is considered only as ancillary to the consolidated ABS-CBN cases, we hereby adopt the narration of facts therein, thus:

> "Petitioners ABS-CBN, formerly known as the Bolinao Electronics Corporation, and SCAN, Inc., are corporations duly organized and existing under the laws of the Philippines, respectively. ABS-CBN was granted temporary permits under Republic Acts Nos. 511 and 512 as amended by Republic Acts Nos. 5730 and 5731, respectively, to: (1) construct, maintain and operate stations for international telecommunications and television stations in the Philippines; and (2) to construct, maintain and operate radio broadcasting stations also in the Philippines for a period of fifty years. The permits granted by Republic Acts Nos. 511 and 512, to operate radio and television stations were converted into regular franchises by the amendatory acts and the name of the grantee was changed to "ABS-CBN Broadcasting Corporation".
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> Section 4 of Republic Act No. 511 and Section 3 of Republic Act No. 512

contain an *ipso facto* clause which reads:

> "In the event of any competing individual, partnership or corporation receiving from the Congress a similar temporary permit in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall, *ipso facto*, become a part of the terms hereof and shall operate equally in favor of the individual, partnership or corporation." (Emphasis Ours)

Subsequently, Congress enacted Republic Act No. 2036 granting the Radio Communications of the Philippines, Inc. (RCPI), a franchise to establish radio stations for domestic telecommunication which was later amended by Republic Acts Nos. 2963 and 4054.

Section 1 of Republic Act No. 2036, as amended by Republic Act No. 2963, provides:

> "SECTION 1. Subject to the provisions of the Constitution, and to the provisions, not inconsistent herewith, of Act numbered three thousand eight hundred and forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes; Commonwealth Act numbered one hundred forty-six, known as the Public Service Act, and their amendments, and other applicable laws, there is hereby granted to the Radio Communication of the Philippines, Inc., its

> successors or assigns, the right and privilege of constructing, installing, establishing and operating in the Philippines, at such places as the said corporation may select and the Secretary of Public Works and Communications may approve, radio stations for the reception and transmission of wireless messages on radiotelegraphy and/or radiotelephony, including both coastal and marine telecommunications, each station to consist of two radio apparatus comprising of a receiving and sending radio apparatus, stations for international telecommunications and stations for broadcasting, including television." (Emphasis Ours)

And Section 14 of the same Act, as amended by Republic Act No. 4054, reads:

> "SECTION 14. In consideration of the franchise and rights hereby granted and any provision of law to the contrary notwithstanding, the grantee shall pay the same taxes as are now or may hereafter be required by law from other individual, copartnerships, private, public or quasi-public associations, corporations, or joint stock companies, on real estate, buildings and other personal property **except radio equipment, machinery and spare parts needed in connection with the business of the grantee, which shall be exempt from customs duties, tariffs and other taxes**, as well as those properties declared exempt in this section. In consideration of the franchise, a tax equal to one and one-half

> per centum of all gross receipts from the business transacted under this franchise by the grantee shall be paid to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act. Said tax shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which taxes the grantee is hereby expressly exempted." (Emphasis Ours)

It appears that ABS-CBN started importing television broadcasting equipment from 1966 when it was still Bolinao Broadcasting Corporation. Upon conversion of the temporary permits into regular franchise, and the name of the grantee was changed to "ABS-CBN Broadcasting Corporation", it paid the franchise taxes on its operations of 1 1/2% of its gross receipt without paying customs duties and taxes on the importation of television equipment, spare parts and machineries.

Shortly after the declaration of Martial Law (under Proclamation No. 1080, dated September 21, 1972) the Department of Finance formed a Joint Customs/BIR Team to investigate alleged tax deficiency of ABS-CBN in the importations of television equipment.

In a memorandum report to the Commissioner of Customs dated July 6, 1973, Heracleo Pagtanac, Supervising Special Investigator, a member of the Joint Team, indicated that the Department of Finance committed errors when it allowed the release of the importations of television equipment of ABS-CBN tax free.

As a consequence thereof, seizure proceedings were instituted against the electronics and television equipment of ABS-CBN with the Collectors of Customs of Manila, Davao, Batangas, Iloilo, Cebu and San Fernando, La Union where said equipment were released. Meanwhile, the equipment in question were subjected to seizure in the ABS-CBN stations where they were located.

After due hearings, the respective collectors of customs, rendered the following decisions:

> 1. The Collector of Customs of the Port of Manila ordered that all seized articles of ABS-CBN under S.I. Nos. 14093, 14093-A and 14093-B, be released only after payment in full of the assessed duties (P8,824,411.00) and the internal revenue taxes (P2,321,217.00), exclusive of other charges, plus a fine equal to twice the amount of the above assessed duties (P17,648,922.00), or a grand total of P28,954,600.00 exclusive of other charges, fine and other charges; (CTA 3162)
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> 2. The Collector of Customs of the Port of Iloilo ordered that the articles seized under S.I. No. 15-73 be released only after payment in full of the assessed customs duties (P581,148.00) and the internal revenue taxes (P69,511.00), exclusive of other charges, plus a fine equivalent to twice the amount of the above assessed duties of (P1,162,296.00) or a

grand total of P1,912,955.00, exclusive of other charges; (CTA Case No. 3163)

3. The Collector of Customs of the Port of Batangas ordered that the articles seized under S.I. No. 4-76 be released, only after payment in full of the assessed customs duties (P40,726.00) and internal revenue taxes (P15,638.00), exclusive of other charges; (CTA Case No. 3164)

4. The Collector of Customs of the Port of Davao ordered that the articles seized under S.I. No. 73-009 be released, only after payment in full of the assessed customs duties (P294,472.00) and the internal revenue taxes (P95,519.00), exclusive of other charges, plus a fine equivalent to twice the amount of the above assessed duties (P598,484.00) or a grand total of P988,745.00, exclusive of other charges; (CTA Case No. 3165)

5. The Collector of Customs of the Port of Cebu ordered that the articles seized under the unnumbered seizure identification be released only after full payment of the assessed customs duties (569,254.00) and internal revenue taxes (P171,046.00), exclusive of other charges, and a fine equivalent to twice the amount of the above assessed duties (P1,138,508.00) or a grand total of P1,878,808.00, exclusive of other charges; (CTA Case No. 3166) and

> 6. The Collector of Customs of the Port of San Fernando, La Union, ordered that the articles seized under S.I. No. 7-76 be released only after payment in full of the assessed customs duties (P248,959.00) and internal revenue taxes (P59,494.00), exclusive of other charges, and a fine equivalent to twice the amount of the above assessed duties (P497,918.00), or a grand total of P806,371.00 exclusive of other charges. (CTA Case No. 3167)

Not satisfied with the ruling of the different collectors of customs, petitioners appealed to the Commissioner of Customs.

On October 8, 1990, the Acting Commissioner of Customs rendered a decision in Customs Case No. 79-44 affirming the decisions of the different collectors and decreed the release, not to forfeit the articles involved in the seizure proceedings, subject however, to the full payment by the claimants-appellants of the corresponding duties, taxes and fines.

Hence, the petition for review.

On August 14, 1981, petitioners' counsel requested to rest their case and to submit their memoranda after petitioner ABS-CBN had closed its cases. (See remarks of Deputy Clerk of Court, CTA record, p. 225.) It was granted by this Court.

On June 24, 1992, this Court, in a resolution, directed the petitioners to file their memoranda in this case since "the ABS-CBN cases had long been terminated and, in fact, said cases were already decided by this Court on May 18, 1992..." (See Resolution, p. 236, CTA record.)

It was only on September 24, 1992 that the petitioners finally filed their memoranda. The respondent did not file his memorandum.

The issues submitted by the petitioners are the following:

a) Whether or not petitioners are entitled to foreclose the articles mortgaged to them but subsequently seized by the respondent;

b) Whether or not the seizures proceedings were valid.

Foreclosure of mortgage, referred to in the first issue, is "a remedy by which the property covered may be subjected to sale to pay demand for which mortgage stands as security" (Pacific Commercial Co. v. Alvarez, 38 OG 758). It is either done extrajudicially or judicially.

Extrajudicial foreclosure of a chattel mortgage is carried out in the procedure outlined in Sec. 14 of the Chattel Mortgage Law. The mortgagee causes the mortgaged property to be sold at public auction by a public officer. In judicial foreclosure, the mortgagee brings a case in court for the foreclosure of said mortgage (Chano v. Du, 55373-R, July 31, 1981). That was precisely what the petitioners of this case had in mind. Only that they brought this case to the wrong forum. They should have brought this to the right court which has competent jurisdiction over this case. But certainly not before this Court. It is well to remind the petitioners that this Court does not possess a wide-ranging jurisdiction. It has a véry special and limited jurisdiction affecting -

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other law or part of law administered by the Bureau of Internal Revenue; and

2. 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 imposed in relation thereto; or other matters arising under the customs law or

other law or part of law administered by the Bureau of Customs; (Sec. 7, R.A. 1125, An Act of Creating the Court of Tax Appeals).

Suffice it to say, that nowhere in the above-quoted provision regarding this Court's jurisdiction can **one find** the remedy of judicial foreclosure. Hence, the **first issue** is rejected for lack of jurisdiction.

The second issue is already moot and academic having been sufficiently answered in the negative in the ABS-CBN cases decided on May 15, 1992. To expound further the same issue will be an exercise in futility on what is already considered a "dead" issue. Petitioners cannot resurrect the same issue. Petitioners cannot utilize this case to raise "new" matter which is actually a rehash of the "dead" issue raised in the ABS-CBN cases and which , as stated earlier, has been adequately and finally disposed of by this Court. Let this Court put that issue to rest where it rightly belongs.

WHEREFORE, the petition for review filed by herein petitioner is hereby denied for lack of jurisdiction and the other issue raised having been considered moot and academic by virtue of the

decision rendered by this Court in the ABS-CBN cases (Nos. 3162 to 3167) on May 15, 1992.

SO ORDERED.

Quezon City, Metro Manila, April 1, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals