REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

BUREAU OF CUSTOMS, Petitioner, **- versus -** **AGC FLAT GLASS PHILIPPINES, INC.,** Respondent.	**CTA EB NO. 1973** (CTA Case No. 8752)
PIONEER FLOAT GLASS MANUFACTURING, INC. (previously known as AGC FLAT GLASS PHILIPPINES, INC., Petitioner, **- versus -** **BUREAU OF CUSTOMS,** Respondent.	**CTA EB NO. 1985** (CTA Case No. 8752) **Present:** **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.* **Promulgated:** JUL 14 2020 1:35 p.m.

x---x

DECISION

UY, *J.*:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review*, CTA EB No. 1973 and CTA EB 1985, both filed before the Court *En Banc* on December 27, 2018, assailing the Decision dated

May 9, 2018[1] and Resolution dated November 20, 2018[2], rendered by the Second Division and Special Second Division, respectively, of this Court (Court in Division) in CTA Case No. 8752 entitled "*AGC Flat Glass Philippines, Inc., Petitioner, vs. Bureau of Customs, Respondent*", the dispositive portions of which respectively read:

<u>Decision dated May 9, 2018</u>:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**, and accordingly, respondent is **ORDERED** to **REFUND OR ISSUE TAX CREDIT CERTIFICATE** in the amount of **TWELVE MILLION FOUR HUNDRED THIRTEEN THOUSAND TWO HUNDRED THIRTY NINE & 49/100 PESOS (Php12,413,239.49)**.
>
> **SO ORDERED.**"

<u>Resolution dated November 20, 2018</u>:

> "**WHEREFORE**, in view of the foregoing, respondent's and petitioner's Motions for Partial Reconsideration filed on May 24, 2018 and June 14, 2018, respectively, are hereby **DENIED** for lack of merit and the assailed DECISION is hereby **AFFIRMED**.
>
> **SO ORDERED.**"

<u>CTA EB No. 1973</u>

CTA EB No. 1973 is the *Petition for Review* filed on December 27, 2018[3] by the Bureau of Customs, as petitioner, against AGC Flat Glass Philippines, Inc. (now known as Pioneer Float Glass Manufacturing, Inc.), as respondent, wherein the BOC prays that the assailed Decision and Resolution in CTA Case No. 8752 be partially reconsidered; that the *Petition for Review* in said case be dismissed; and that the subject claim for refund be denied in its entirety.

---

[1] Penned by Associate Justice Catherine T. Manahan and concurred by Associate Justice Juanito C. Castañeda, Jr., and Associate Justice Caesar A. Casanova, EB Docket (CTA EB No. 1973), pp. 5 to 30; and EB Docket (CTA EB No. 1985), pp. 38 to 63.

[2] Penned by Associate Justice Catherine T. Manahan and concurred by Associate Justice Juanito C. Castañeda, Jr. *(Special Second Division)*, EB Docket (CTA EB No. 1973), pp. 32 to 39; EB Docket (CTA EB No. 1985), pp. 64 to 71.

[3] EB Docket (CTA EB No. 1973), pp. 43 to 63.

CTA EB No. 1985

CTA EB No. 1985 is the *Petition for Review* filed on December 27, 2018[4] by Pioneer Float Glass Manufacturing, Inc., as petitioner, against the BOC, as respondent, praying that the above-stated Decision and Resolution be partially reversed; and that the Court order BOC to refund or issue a tax credit certificate (TCC) in the amount of ₱16,100,010.66.

THE FACTS

Pioneer Float Glass Manufacturing, Inc. (previously known as AGC Flat Glass Philippines, Inc., and hereinafter referred to as ***"Pioneer Float Glass"***) is primarily engaged in the export production of various industrial glass products such as float glass, figure glass, and glass mirrors. It is a duly registered Ecozone Export Enterprise (EEE) pursuant to Republic Act (RA) No. 7916 otherwise known as "The Special Economic Zone Act of 1995" (PEZA Law) by the Philippine Economic Zone Authority (PEZA) under Certificate of Registration No. 07-33.

According to Pioneer Float Glass, one of its production requirements is petroleum fuel which it needs to operate its furnaces for the production of its glass products. Thus, to secure a steady supply of petroleum fuel, it entered into a *Supply Agreement* with Pilipinas Shell Petroleum Corporation (PSPC). Pursuant to the *Supply Agreement*, the purchase price of petroleum fuel sold by PSPC to Pioneer Float Glass included "import duty imposed by the government."

Pioneer Float Glass claims that the customs duties for petroleum fuel purchases passed on by PSPC amounted to ₱11,284,069.24 for the year 2008 and ₱17,289,180.91 for the year 2009, or a total of ₱28,573,250.15.

Believing that it should have been exempted from paying the customs duties which were included in the cost of said procured fuel, it filed a letter dated October 19, 2010 to the Bureau of Custom's (BOC) District Collector of Batangas International Port requesting for the refund of the customs duties imposed on the procured petroleum fuel covering the year 2008 in the amount of ₱11,284,069.24.

---

[4] EB Docket (CTA EB No. 1985), pp. 1 to 33.

On February 16, 2011, Pioneer Float Glass filed another claim for refund for the customs duties imposed on its 2009 procured petroleum fuel amounting to ₱17,289,180.91.

The BOC, through the District Collector of Batangas International Port, in a letter dated October 28, 2011, informed Pioneer Float Glass that its request for refund of customs duties paid for the period covering January 1, 2008 to December 31, 2009 amounting to ₱28,573,250.15 is denied citing that under its *Registration Agreement* with PEZA dated March 13, 2007, the latter was not entitled to PEZA incentives because "the area is already fully developed."

Thus, on November 14, 2011, Pioneer Float Glass filed a letter request to the Commissioner of Customs (COC), for the reversal of said denial where it prays for the approval of said claim for refund considering that it had fulfilled and submitted all the requirements for such claim.

Pioneer Float Glass filed the appeal fee amounting to ₱3,000.00. On December 25, 2012, petitioner through its representative KPMG, sent a letter dated December 20, 2012 to BOC reiterating its prayer for the approval of said refund claim.

However, Pioneer Float Glass did not receive any decision from the COC. Thus, to avoid having its claim for refund prescribed, Pioneer Float Glass filed a *Petition for Review*[5] on December 27, 2013 before the Court in Division docketed as CTA Case No. 8752.

On May 23, 2014, the BOC filed its *Answer* in CTA Case No. 8752, arguing, among others, that the said *Petition* was filed out of time because there was already a decision dated May 21, 2012, which was supposed to be final and executory.

On June 3, 2014, Pioneer Float Glass asked the Court in Division to declare BOC in default for filing its *Answer* beyond the period granted. The Court in Division admitted the *Answer* and ruled that BOC was not yet in default nor declared in default.

The Pre-Trial Conference was initially set on August 4, 2014 and both parties were directed to submit their respective Pre-Trial Brief. However, upon several motions, the Pre-Trial Conference was

[5] Division Docket (CTA Case No. 8752) – Vol. I, pp. 6 to 44.

reset to October 23, 2014, January 22, 2015, and finally on March 5, 2015. Pioneer Float Glass filed its *Pre-Trial Brief* on October 20, 2014 and an *Amended Pre-Trial Brief* on January 13, 2015. On the other hand, BOC filed its *Pre-Trial Brief* on January 14, 2015. Thereafter a Pre-Trial Order was issued on March 27, 2015.

During trial, Pioneer Float Glass presented the following witnesses: (1) Emmanuel Y. Go, its President and Head of Purchasing and Raw Material Department[6]; (2) Vinorna V. Lim, Manager of Finance and Accounting Department[7]; (3) Maria Victoria A. Umali, its Manager of the Human Resource & Administrative Services Department[8]; (4) James Philip A. Gonzales, Its Imports and Exports Operations Scheduler for Trading and Supply Operations of Pilipinas Shell Petroleum Corp[9]; (5) Leandro M. Lontok, the Court-commissioned Independent Certified Public Accountant (ICPA)[10]; (6) and Abner A. Naval, its Group Head for Production[11].

After presenting its evidence, Pioneer Float Glass filed its *Formal Offer of Evidence* (FOE) on November 3, 2015 in CTA Case No. 8752.

In the Resolution dated January 18, 2016[12], a substantial number of Pioneer Float Glass' evidence was not admitted due to the following reasons: (1) failure of the exhibits formally offered to correspond with actual markings and descriptions of the documents actually marked ; (2) failure to submit the duly-marked exhibit; (3) failure to submit the originals for comparison; (4) failure to properly identify the exhibits; and (5) failure to properly mark the documents.

On February 2, 2016, Pioneer Float Glass filed an *Omnibus Motion (1) For Reconsideration of the Resolution dated 18 Jan.2016); (2) To Admit Exhibits; (3) To Set Case for Marking/Re-Marking of Exhibits; and (4) To Set Case for Comparison of Copies of Exhibits with the Originals, and if necessary, presentation of Secondary Evidence*[13], stating that the mix-up in the presentation of the exhibits

---

[6] Exhibit "P-27", Division Docket (CTA Case No. 8752) – Vol. II, pp. 375 to 400.
[7] Exhibit "P-28", Division Docket (CTA Case No. 8752) – Vol. II, pp. 536 to 548.
[8] Exhibit "P-66", Division Docket (CTA Case No. 8752) – Vol. III, pp. 951 to 958.
[9] Exhibit "P-69", Division Docket (CTA Case No. 8752) – Vol. III, pp. 1278 to 1288.
[10] Exhibit "P-71", Division Docket (CTA Case No. 8752) – Vol. III, pp. 1314 to 1323; Exhibit "P-80", Division Docket (CTA Case No. 8752) – Vol. IV. pp. 1370 to 1381.
[11] Exhibit "P-1376", Division Docket (CTA Case No. 8752) – Vol. IV, pp. 1383 to 1390.
[12] Division Docket (CTA Case No. 8752) – Vol. IV, pp. 1530 to 1534.
[13] Division Docket (CTA Case No. 8752) – Vol. IV, pp. 1542 to 1559.

indicated in the FOE as well as the markings was due to the oversight of its counsel; and praying that the Court in Division reconsider the Resolution dated January 18, 2016, and admit its exhibits.

On February 19, 2016, the BOC filed its *Manifestation in Lieu of Comment*[14], interposing no objection to the *Omnibus Motion* and submitting the arguments raised therein to the sound discretion of the Court.

In the Resolution[15] dated March 28, 2016, the Court in Division granted Pioneer Float Glass' *Motion to Set Case for Marking/Re-marking of Exhibits and Motion to Set Case for Comparison of Copies of Exhibits with the Originals, and if necessary, Presentation of Secondary Evidence.* Thus, a Commissioner's Hearing was set in CTA Case No. 8752 for the marking and/or re-marking of Pioneer Float Glass' exhibits on April 25, 2016.[16]

Pursuant to the Order of the Court in Division on May 16, 2016, Pioneer Float Glass filed its *Memorandum*[17] on May 31, 2016, praying for reconsideration of the Resolution dated January 18, 2016.

In the Resolution[18] dated July 27, 2016, the Court in Division ordered Pioneer Float Glass to file an Amended FOE. On September 2, 2016, Pioneer Float Glass filed its *Amended Formal Offer of Evidence.*[19] On November 28, 2016, the Court in Division issued a Resolution[20], partially granting the *Omnibus Motion* and admitting some of Pioneer Float Glass' exhibits.

On the other hand, the BOC, instead of presenting its own evidence merely adopted several exhibits of Pioneer Float Glass.[21] Thus, the Court in Division ordered both parties to submit their respective Memoranda. The BOC submitted its *Memorandum* on March 31, 2017[22].

---

[14] Division Docket (CTA Case No. 8752) – Vol. IV, pp. 1571 to 1572.
[15] Division Docket (CTA Case No. 8752) – Vol. IV, pp. 1580 to 1581.
[16] Division Docket (CTA Case No. 8752) – Vol. IV, p. 1583.
[17] Division Docket (CTA Case No. 8752) – Vol. IV, pp. 1617 to 1641.
[18] Division Docket (CTA Case No. 8752) – Vol. IV, pp. 1647 to 1648.
[19] Division Docket (CTA Case No. 8752) – Vol. IV, pp. 1658 to 1703.
[20] Division Docket (CTA Case No. 8752) – Vol. V, pp. 1711 to 1715.
[21] Division Docket (CTA Case No. 8752) – Vol. V, pp. 1717 to 1720.
[22] Division Docket – Vol. V (CTA Case No. 8752), pp. 1795 to 1810.

Meanwhile, on April 6, 2017, Pioneer Float Glass filed a *Motion for Leave to Allow Excluded Evidence*[23], praying that Exhibits "P-17", "P-20", "P-21", and "P-26", which were denied admission for failure to submit the originals for comparison, be admitted. On even date, Pioneer Float Glass filed a *Motion to Admit Attached Memorandum*[24] praying for the admission of the attached *Memorandum*[25] despite its belated filling.

On May 2, 2017, the BOC filed its *Comment*[26] to Pioneer Float Glass' Motions. As regards the *Motion for Leave to Allow Excluded Evidence*, the BOC argues that the Resolution denying the admission of the exhibits has already attained finality and that while it did not object to the Amended FOE, it does not excuse Pioneer Float Glass from complying with the most basic rules governing admissibility of evidence. With regard to the *Motion to Admit Attached Memorandum,* the BOC asserts that Pioneer Float Glass asked for an additional extension, out of respect to the Court and in adherence to the rules of procedures.

In the Resolution[27] dated May 16, 2017, the Court in Division denied the *Motion for Leave to Allow Excluded Evidence* on the ground that the said motion is a second motion for reconsideration which is proscribed. In the same Resolution, the Court in Division granted the *Motion to Admit Attached Memorandum* and admitted the *Memorandum* in the interest of justice. The case was then submitted for decision.

On May 9, 2018, the Court in Division issued the assailed Decision[28], partially granting Pioneer Float Glass' *Petition for Review* and ordering BOC to refund or issue TCC in favor of Pioneer Float Glass in the amount of ₱12,413,239.49.

On May 24, 2018, the BOC filed its *Motion for Partial Reconsideration (Of the Decision dated May 9, 2018)*,[29] while Pioneer Float Glass filed its *Motion for Partial Reconsideration*[30] on May 25,

---

[23] Division Docket – Vol. V (CTA Case No. 8752), pp. 1736 to 1748.
[24] Division Docket – Vol. V (CTA Case No. 8752), pp. 1750 to 1756.
[25] Division Docket – Vol. V (CTA Case No. 8752), pp. 1758 to 1792.
[26] Division Docket – Vol. V (CTA Case No. 8752), pp. 1819 to 1825.
[27] Division Docket – Vol. V (CTA Case No. 8752), pp. 1828 to 1829.
[28] Division Docket – Vol. V (CTA Case No. 8752), pp. 1833 to 1858.
[29] Division Docket – Vol. V (CTA Case No. 8752), pp. 1859 to 1873.
[30] Division Docket – Vol. V (CTA Case No. 8752), pp. 1879 to 1896.

2018. Pioneer Float Glass filed its *Comment/Opposition*[31] June 7, 2018; while the BOC filed its *Comment*[32] on August 20, 2018.

In the assailed Resolution[33] dated November 20, 2018, the Court in Division denied both Pioneer Float Glass' *Motion for Partial Reconsideration* and the BOC's *Motion for Partial Reconsideration (Of the Decision dated May 9, 2018)*, for lack of merit

Subsequently on December 11, 2018, both parties filed their respective *Motions for Extension of Time to File Petition for Review,*[34] praying for an extension of fifteen days from December 11, 2018, or until December 26, 2018 to file their respective *Petitions for Review.* Both Motions were granted by the Court *En Banc.*[35]

On December 27, 2018, BOC filed its *Petition for Review* before the Court *En Banc* and the same was docketed as CTA EB No. 1973[36]. On even date, Pioneer Float Glass also filed its *Petition for Review* docketed as CTA EB No. 1985.[37]

Considering that the instant cases are appeals from the Decision dated May 9, 2018 and Resolution dated November 20, 2018, in CTA Case No. 8752 rendered by the Court in Division, CTA EB No. 1985 was consolidated with CTA EB No. 1973 on December 28, 2018.[38]

In the Resolution dated January 24, 2019,[39] the Court *En Banc* ordered both parties to file their respective *Comments* to opposing party's Petition for Review. On February 15, 2019, the BOC filed a *Motion for Extension of Time to File Comment*[40], praying for an extension of thirty (30) days from February 18, 2019, or until March 20, 2019 to file its *Comment.* The same was granted by the Court *En Banc* on February 18, 2019.[41]

---

[31] Division Docket – Vol. V (CTA Case No. 8752), pp. 1904 to 1922.
[32] Division Docket – Vol. V (CTA Case No. 8752), pp. 1975 to 1981.
[33] Division Docket – Vol. V (CTA Case No. 8752), pp. 1985 to 1992.
[34] EB Docket (CTA EB No. 1973), pp. 1 to 4; EB Docket (CTA EB No. 1985), pp. 72 to 75.
[35] Minute Resolution dated December 14, 2018, EB Docket (CTA EB No. 1973), p. 42; Minute Resolution dated January 11, 20119, EB Docket (CTA EB No. 1973), p. 173.
[36] EB Docket (CTA EB No. 1973), pp. 43 to 66.
[37] EB Docket (CTA EB No. 1985), pp. 1 to 33.
[38] Minute Resolution dated December 28, 2018, EB Docket (CTA EB No. 1973), p. 172.
[39] EB Docket (CTA EB No. 1973), pp. 175 to 176.
[40] EB Docket (CTA EB No. 1973), pp. 177 to 180.
[41] Minute Resolution dated February 18, 2015, EB Docket (CTA EB No. 1973), p. 183.

On February 26, 2019, Pioneer Float Glass filed its *Comment/Opposition (to the Petition for Review of Bureau of Customs dated 14 December 2018).*[42]

The BOC filed on March 20, 2019, an *Omnibus Motion (1. For Partial Reconsideration of the Resolution dated 18 February 2019; and 2. For a Final Extension of Time to File Comment)*[43], praying for a final extension of thirty (30) days from March 20, 2019, or until April 19, 2019[44] to file its comment, which was granted by the Court *En Banc* in the Resolution[45] dated April 22, 2019. On April 22, 2019, the BOC filed its *Comment*[46].

In the Resolution[47] dated May 20, 2019, the Court *En Banc* ordered both parties to file their respective *Memoranda*. On June 25, 2019, the BOC filed its *Manifestation (In Lieu of Memorandum)*[48], stating that it is adopting the arguments raised in the *Petition for Review* filed on December 27, 2018 in CTA EB No. 1973 and in its *Comment* filed on April 22, 2019 in CTA EB No. 1985 as its Memorandum.

On July 8, 2019, Pioneer Float Glass filed its *Memorandum.*[49] Thereafter, the instant consolidated cases were submitted for decision in the Resolution[50] dated July 26, 2019.

Hence, this Decision.

ISSUES

In **CTA EB No. 1973**, the BOC raises the following issues, *to wit:*

"I

WHETHER THE HONORABLE COURT'S SECOND DIVISION HAS JURISDICTION OVER THE INACTION OF THE COMMISSIONER OF CUSTOMS.

---

[42] EB Docket (CTA EB No. 1973), pp. 184 to 207.
[43] EB Docket (CTA EB No. 1973), pp. 209 to 212.
[44] April 19, 2019 is a Holiday (Good Friday). Thus, BOC has until April 22, 2019, which is the next working day to file its Comment.
[45] EB Docket (CTA EB No. 1973), pp. 232 to 234.
[46] EB Docket (CTA EB No. 1973), pp. 215 to 228.
[47] EB Docket (CTA EB No. 1973), pp. 236 to 237.
[48] EB Docket (CTA EB No. 1973), pp. 238 to 240.
[49] EB Docket (CTA EB No. 1973), pp. 245 to 281.
[50] EB Docket (CTA EB No. 1973), pp. 284 to 285.

II.
WHETHER RESPONDENT ENJOYS PEZA INCENTIVES AND ENTITLED TO ITS PARTIALLY GRANTED REFUND."[51]

In **CTA EB No. 1985**, Pioneer Float Glass raises the following issue, *to wit*:

> "WHETHER PETITIONER [PIONEER FLOAT GLASS] IS ENTITLED TO CLAIM REFUND FOR THE FULL AMOUNT OF IMPORT DUTIES PAID AMOUNTING TO TWENTY EIGHT MILLION FIVE HUNDRED SEVENTTY THREE THOUSAND TWO HUNDRED FIFTY AND 15/100 PESOS (28,573,250.15) AND NOT JUST TO THE PARTIAL AWARD IN THE AMOUNT OF TWELVE MILLION FOUR HUNDRED THIRTEEN THOUSAND TWO HUNDRED TWENTY NINE AND 49/100 PESOS (12,413,239.49) AS PROVIDED IN THE DECISION DATED MAY 16, 2018"[52]

The BOC's arguments:

The BOC argues that the Court in Division has no jurisdiction over the inaction of the COC; that the right of Pioneer Float Glass to file an appeal before the Court in Division has not ripened considering that no decision or ruling has been rendered by the COC.

The BOC further asserts that Pioneer Float Glass is not entitled to PEZA incentives. Hence, its claim for refund should be entirely denied.

In addition, the BOC claims that based on the evidence presented by Pioneer Float Glass, there is no clear grant of incentives upon which it can claim entitlement to a refund of customs duties incurred in the purchase of fuel; and that the subject claim is seriously doubtful.

Allegedly, jurisprudence is settled that claims for refund, being in the nature of tax exemptions, should be construed *strictissimi juris* against the claimant.

---

[51] *Petition for Review*, EB Docket (CTA EB No. 1973), p. 49.
[52] *Petition for Review*, EB Docket (CTA EB No. 1985), p. 16.

Pioneer Float Glass' arguments:

Pioneer Float Glass argues that it was erroneous on the part of the BOC to state that its Petition was filed out of time. Section 11 of R.A. No. 1125, as amended, provides that decisions, rulings, or inaction of the Commissioner of Customs may be filed within thirty (30) days from receipt of such decision or ruling.

According to Pioneer Float Glass, it was justified in filing the instant action in accordance with the principle of *solutio indebiti* as confirmed and applied by the Supreme Court; and that based on the application of said principle, the prescriptive period is six (6) years from the date of payment.

Lastly, Pioneer Float Glass asserts that it is entitled to duty and tax-free importation under the PEZA law and its Registration Agreement with the PEZA.

THE COURT *EN BANC*'S RULING

After careful and thorough consideration of the parties' respective grounds and arguments raised in their respective Petition for Review, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a modification or reversal of its assailed Decision dated May 9, 2018 and Resolution dated November 20, 2018, rendered by the Court in Division in CTA Case No. 8752 .

The Court in Division did not err in exercising jurisdiction over Pioneer Float Glass' claim for refund of customs duties despite lack of action of the BOC.

In the assailed Decision, the Court in Division ruled that it has jurisdiction over the instant case despite the absence of ruling or decision from the COC on Pioneer Float Glass' claim for refund of customs duties.

The BOC, however, argues that the Court in Division has no jurisdiction over the inaction of the COC; and that only decisions of the COC may be appealed to the Court.

We sustain the jurisdiction of this Court.

The ruling of the Supreme Court in the case of *Nestle Philippines, Inc., (Formerly Filipro, Inc.) vs Court of Appeals, Court of Tax Appeals and Commissioner of Customs*[53], involving the inaction of the BOC over claims for refund of customs duties is instructive, to wit:

> "In the light of the above-cited provisions of the Tariff and Customs Code, it appears that **in all cases subject to protest, the claim for refund of customs duties may be foreclosed only when the interested party claiming refund fails to file a written protest before the Collector of Customs.** This written protest which must set forth the claimant's objection to the ruling or decision in question together with the reasons therefor must be made either at the time when payment of the amount claimed to be due the government is made or within fifteen (15) days thereafter. In conjunction with this right of the claimant is the duty of the Collector of Customs to hear and decide such protest in accordance and within the period of time prescribed by the law.
>
> Accordingly, **once a written protest is seasonably filed with the Collector of Customs the failure or inaction of the latter to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby**. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, if any is proven, and thereby enrich itself at the expense of the taxpayers. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, if any, of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.

---

[53] G.R. No. 134114, July 6, 2001.

It is clear from the foregoing that in claims for refund of customs duties, the same may be foreclosed only when the interested party claiming refund fails to file a written protest before the Collector of Customs. Further, once a written protest is seasonably filed, the failure or inaction of the Collector of Customs to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby.

It bears noting that in the afore-cited *Nestle case*, despite the lack of decision of the Collector of Customs and the COC on the refund claim, the Supreme Court remanded the same to the CTA for factual findings. Evidently, the inaction of the BOC on cases involving claims for refund of customs duties will not bar this Court from taking cognizance of said claims.

In the instant case, upon receipt of the denial of the Collector of Customs on October 28, 2011[54], Pioneer Float Glass filed a letter request[55] to the COC on November 14, 2011, praying for the reversal of the denial of its claim for refund. The COC, however, failed to act on Pioneer Float Glass' protest. Consequently, to prevent prescription of its claim, Pioneer Float Glass filed its *Petition for Review* with the Court in Division despite the absence of a ruling by the COC.

Applying the pronouncement in the *Nestle case*, considering that a protest was already filed with the COC, the inaction of the latter should not prejudice the right of Pioneer Float Glass to its claim for refund of the customs duties. Thus, the Court in Division did not err in taking cognizance of the instant case for purposes of determining the actual and proper amount of customs duties.

Pioneer Float Glass is entitled to the partial refund of customs duties.

The BOC reiterates its claim that Pioneer Float Glass is not entitled to PEZA incentives as indicated in paragraph (a) of Article XIII of its Original Registration Agreement dated Mach 13, 2007.

We disagree.

---

[54] Exhibit "P-22", Division Docket – Vol. II (CTA Case No. 8752), p. 872.
[55] Exhibit "P-24", Division Docket – Vol. II (CTA Case No. 8752), p. 882.

As already pointed out by the Court in Division in the assailed Decision, the registration agreement referred to by BOC pertains to Pioneer Float Glass' registration as an ECOZONE Developer/Operator and **not** the registration as a PEZA-registered EEE under PEZA Certificate of Registration NO. 07-33 issued on June 29, 2007[56].

Being a PEZA-registered entity, Pioneer Float Glass enjoys fiscal incentives pursuant to Section 23 of Republic Act No. 7916, or "The Special Economic Zone Act of 1995", to wit:

> "SECTION 23. Fiscal Incentives. — Business establishments operating within the ECOZONES **shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66**, the law creating the Export Processing Zone Authority, or **those provided under Book VI of Executive Order No. 226**, otherwise known as the Omnibus Investment Code of 1987." (Emphasis supplied)

Relative thereto, Rule XV of the Implementing Rules and Regulations (IRR) of RA 7916, Section 17 of the PD No. 66, and Section 77 of EO No. 226, states that merchandise or supplies brought into the ECOZONE are beyond the ambit of customs law, to wit:

Rule XV of the IRR of RA 7916

> "SECTION 1. *Exemption from Duties and Taxes on Merchandise.* — **Merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description brought into the ECOZONE Restricted Area <u>by an ECOZONE Export or Free Trade Enterprise</u>** to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, grade or otherwise processed, manipulated, manufacture, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, **shall <u>not</u> be subject to customs and internal revenue laws and regulations of the Philippines nor to local tax ordinances**. . ." (Emphasis supplied)

---

[56] Exhibit "P-5".

Presidential Decree 66

> "Section 17. Tax Treatment of Merchandise in the Zone, — (1) Except as otherwise provided in this Decree, **foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the Zone** to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity, **shall not be subject to Customs and internal revenue laws and regulations nor to local tax ordinances**, the provisions of law to the contrary notwithstanding." (Emphasis supplied)

Executive Order 226

> "Article 77. *Tax Treatment of Merchandise in the Zone.* —
>
> (1) Except as otherwise provided in this Code, **foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description**, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, **shall <u>not</u> be subject to customs and internal revenue laws** and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding." (Emphasis supplied)

It is clear from the foregoing provisions that supplies brought into the Ecozone by a duly-registered PEZA enterprise and to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise, whether directly or indirectly related in such activity, shall not be subject to customs laws and regulations.

In the case of *Commissioner of Customs vs Philippine Phosphate Fertilizer Corporation*[57], the Supreme Court affirmed that the merchandise or supplies brought into the zone are exempt from Customs duties and taxes. The Supreme Court ruled as follows:

> "Contrary to the allegation of the Respondent that Section 17(1) does not provide for duty and tax exemption privilege, this Court disagrees. That phrase shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding cannot be interpreted in any other manner than to mean **that merchandise or supplies brought into the zone are exempt from customs duties and taxes.** The incentive given under Section 17(1) is broader than a mere tax exemption. The phrase is so broad to include not only the exemption from customs duties and taxes but everything required in the enforcement of the customs and internal revenue laws save on the exceptions and conditions specified in the EPZA law itself. Considering that the customs and internal revenue laws are primarily enacted to impose duties and taxes, the phrase cannot be interpreted to exclude these impositions. More so, the phrase will also include exemption from other rules and regulations which are normally followed in the discharge of importation such as the filing of import entries, examinations and other requirements attendant to the importation of goods into the country." (Emphasis supplied.)

Applying the foregoing to the instant case, petroleum fuel purchased by Pioneer Float Glass which was delivered to its factory inside the Asahi Special Economic Zone was to be used for the production of glass products. Accordingly, being a PEZA-registered EEE, the passed-on customs duties on the said purchases may be a proper subject of a claim for refund.

Pioneer Float Glass failed to prove that customs duties amounting to ₱16,160,010.66 were actually paid.

In the assailed decision, the Court in Division disallowed the amount of ₱2,491,808.98 relating to the purchase of petroleum made

---

[57] G.R. No. 144440, September 1, 2004

in February 2008, as these were unsupported by evidence of the actual quantity of liters purchased and that the resulting amount of customs duties was based merely on an estimated quantity.

The Court in Division likewise disallowed the amount of ₱13,668,201.66 pertaining to IERDs without machine validation or any other proof of payment.

In contesting the foregoing disallowances, petitioner claims that with respect to the disallowed customs duties amounting to ₱2,491,808.98, the same are supported by sales invoices; and that any uncertainty on the number of liters purchased on which the amount of customs duties is based, can be determined by a simple computation as ascertained by the ICPA.

On the other hand, as regards the disallowed amount of ₱13,668,201.66, Pioneer Float Glass insists that the related IEIRDs were machine validated but that the copies of IEIRDs submitted by the ICPA do not clearly show the machine validation of the said IEIRDs.

We affirm the findings of the Court in Division.

As found by the Court in Division, the sales invoices pertinent to the disallowed customs duties amounting to ₱2,491,808.98, were not presented by Pioneer Float Glass. The ICPA, in determining the amount of customs duties, simply based its computation using prior month's average quantity. It is apparent therefore that the amount of customs duties arrived at by the ICPA was a mere estimate and not the actual amount of customs duties paid.

As regards the disallowed customs duties relating to the IEIRDs without machine validation, the Court *En Banc* likewise sustains the findings of the Court in Division that Pioneer Float Glass failed to prove that the IEIRDs relating to the customs duties amounting to ₱13,668,201.66, were machine validated. An IEIRD is required to properly substantiate the payment of the duties and taxes on imported goods.[58] Pertinent thereto, Customs Administrative Order No. 2-95, dated September 8, 1995, requires that the IEIRDs must be machine validated to establish the final payment of duties and taxes, to wit:

---

[58] *Taganito Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 201195, November 26, 2014.

"September 8, 1995

CUSTOMS ADMINISTRATIVE ORDER NO. 2-95

xxx xxx xxx

2.3 The Bureau of Customs Official Receipt (BCOR) will no longer be issued by the AABs (Authorized Agent Banks) for the duties and taxes collected. In lieu thereof, the amount of duty and tax collected including other required information **must be machine validated directly on the following import documents** and signed by the duly authorized bank official:

2.3.1. **Import Entry and Internal Revenue Declaration (IEIRD) for final payment of duties and taxes.**

xxx xxx xxx." (Emphasis supplied)

Applying the foregoing to the instant case, since Pioneer Float Glass failed to sufficiently establish that the subject IEIRDs were machine validated, the Court in Division did not err in disallowing the related customs duties amounting to ₱13,668,201.66.

In sum, We sustain the disallowances of customs duties in the total amount of ₱16,160,010.66 (₱2,491,808.98 + ₱13,668,201.66) in view of the failure of Pioneer Float Glass to prove that the said customs duties were actually paid.

We see no reversible error in the factual findings of the Court in Division

Upon careful review of the arguments raised by both Pioneer Float Glass and the BOC, the Court *En Banc* finds that these are mere reiterations of what have been considered and passed upon by the Court Division in the assailed Decision dated May 9, 2018, and Resolution dated November 20, 2018.

It must be remembered that the findings of fact by the Court in Division are **not** to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[59]

WHEREFORE, in light of the foregoing considerations, both *Petitions for Review* are hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated May 9, 2018 and Resolution dated November 20, 2018, both rendered by the Court in Division in CTA Case No. 8752 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

---

[59] *Republic of the Philippines, represented by the Commissioner of Internal Revenue* v. *Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015 citing *Sea-Land Service, Inc.* v. *Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446. Refer also to *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice