REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MS & E SHIPPING INC.,
represented by DISPLACED, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 4480**

COMMISSIONER OF CUSTOMS,
Respondent.

PROMULGATED:
SEP 30 1994

x - x

D E C I S I O N

This is a petition for review seeking the reversal of the decision of respondent Commissioner of Customs dated April 2, 1990, affirming <u>in toto</u> the decision of the Collector of Customs, MICP ordering the forfeiture of petitioner's shipment of brand-new truck tires on the ground that these were misdeclared.

Petitioner is a domestic corporation organized for the primary purpose of engaging in the business of overseas shipping. It is represented in these proceedings by DISPLACED, INC., a non-profit, non-stock corporation organized for the purpose of, among others, "support(ing) the present program of the government under the National Reconciliation Development Program under and by virtue of the (sic) Executive Order No. 103." On March 31, 1987 the shipment in question arrived at the Manila International Container Port

(MICP) from Singapore on board the vessel "Christine Maersk". Said shipment was covered by Bill of Lading No. SIN-059102 and was consigned to petitioner MS & E Shipping, Inc.

On June 30, 1987, before the corresponding import entry could be made for the shipment in question, the Collector of Customs at the MICP issued a hold order against said shipment on the ground that the importation thereof violated Section 2503 of the Tariff and Customs Code of the Philippines (TCCP). Subsequently, on October 26, 1987, respondent Commissioner of Customs issued another hold order against the same shipment. On November 3, 1987, the Officer-in-Charge of the CIID (now CIIS) recommended that abandonment proceedings be instituted against the aforesaid shipment pursuant to Section 1801 of the TCCP. However, on November 6, 1987, said recommendation was changed and the Collector of Customs recommended instead, that seizure proceedings be instituted for alleged violations of Section 2503 in relation to Section 2530 (g) and (l)-3, 4 & 5 of the TCCP. Pursuant to the latter recommendation, a warrant of seizure and detention was issued against the shipment in question, and the corresponding seizure proceedings were commenced by the Collector of Customs.

After due proceedings, the Collector of Customs rendered a proposed decision dated February 6, 1989 dismissing the seizure proceedings on the ground that since no import entry declaration had been filed yet at the time the proceedings were commenced, no violation of Section 2503 of the TCCP could be attributed to petitioner. The proposed decision was sent to respondent Commissioner for review, who in his second indorsement dated September 20, 1989, denied clearance of the draft decision and the Collector of Customs was directed to order the forfeiture of petitioner's shipment on the ground that petitioner violated Section 2530 (1)-3, 4 & 5 of the TCCP. Consequently, the Collector of Customs eventually rendered and promulgated a decision dated September 28, 1989, ordering the forfeiture of the shipment in question.

Petitioner appealed the decision of the Collector of Customs to respondent Commissioner. On April 2, 1990, respondent Commissioner rendered the questioned decision affirming in toto the September 28, 1989 decision of the Collector of Customs. On June 25, 1990, petitioner filed a motion for reconsideration of the decision of respondent Commissioner. Pending resolution of said motion, petitioner, on August 6, 1990, filed the instant petition.

On October 8, 1990, respondent Commissioner filed his Answer denying the material allegations of the petition and contending, among others, that petitioner has no cause of action and that it was not the real party in interest. After both parties had presented their evidence, the Court resolved to require them to file their respective memoranda. However, only respondent Commissioner filed his Memorandum on August 18, 1993.

After a careful evaluation of the records of this case, the Court resolves to DENY the petition.

Section 2, Rule 3 of the Revised Rules of Court provides in no uncertain terms that "every action must be prosecuted and defended in the name of the real party in interest", and that "all persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs."
A real party in interest is defined as the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit (***Salonga vs. Warner, Barnes & Co., Ltd.,*** **G.R. No. 2246, January 31, 1951**).

It is not disputed that, prior to the filing of instant petition, petitioner had already disposed of all its rights and interest in the shipment in question in favor of DISPLACED, INC., its purported "representative" in these proceedings, by way of an instrument denominated as a Deed of Donation dated June 7, 1988. There can be no question, therefore, that petitioner no longer has any interest in the subject of the instant proceedings. This being the case, petitioner does not stand to be adversely affected by, nor to benefit from, the decision of this Court. In short, it is not the real party in interest in this case.

The real party in interest in this case is DISPLACED, INC., the alleged done of the shipment in question. It is the latter that stands to benefit from, or be adversely affected by, any disposition made by the Court of the instant case. In the words of Section 2, Rule 3 of the Rules of Court, it is the party "having an interest in the subject of the action and in obtaining the relief demanded", namely, the release of the shipment in question.

We are not unmindful of the fact that DISPLACED, INC. has actually appeared in and has prosecuted the instant proceedings. However, it appears that such appearance was not in its own behalf, but as the alleged "representative" of petitioner MS & E Shipping, Inc. In other words, DISPLACED, INC. has not been impleaded either as a party plaintiff or as a defendant in this case. Any decision rendered by this Court can have no binding effect on DISPLACED, INC. itself. If at all, the latter would be bound only in its capacity as the purported "representative" of petitioner MS & E Shipping, Inc.

In Travel Wide Associated Sales (Phil.), Inc. vs. Court of Appeals (199 SCRA 205), the Supreme Court held that an action that is not brought in the name of the real party in interest may be dismissed on the ground that the complaint states no cause of action. Thus:

> "As defined, a real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Rule 3, Section 2, of the Rules of Court provides explicitly that 'every action must be prosecuted and defended in the name of the real party-in-interest.' The party-in-interest is one who prosecutes or defends and is benefited or injured. The term applies not only to the plaintiff but to the defendant, and the suit must be dismissed if neither of them is a real party-in-interest. If the suit is not brought in the name of or against the real party-in-interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action.
>
> Indeed, even if the special defense is not invoked in the motion to dismiss, it would still not be deemed waived because it is one of the two exceptions mentioned in Rule 9, Section 2, to the omnibus motion rule. The first is lack of jurisdiction, which can be invoked anytime, even on appeal.

> The second is lack of a cause of action, which can be raised even during the trial on the merits." (ibid at 209; underscoring supplied)

In the case at bar, respondent Commissioner squarely raised the defense that petitioner has no cause of action and that the petition was not brought in the name of the real party in interest, both in its Answer and in its Memorandum dated August 13, 1993. And as earlier stated, the records clearly show that the real party in interest, DISPLACED, INC. has not been impleaded either as a plaintiff or as a respondent. This being the case, the ruling laid down in Travel Wide Associated Sales (Phil.), Inc. (supra) is squarely applicable.

WHEREFORE, in view of the foregoing, the Court hereby resolves to **DISMISS** the petition. No pronouncement as to costs.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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