REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

UNIMEX MICRO-ELECTRONICS GmBH, Petitioner,	**CTA CASE NO. 8412**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
REPUBLIC OF THE PHILIPPINES, Respondent.	**Promulgated:** NOV 1 4 2012 2:35 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before the Court is a Petition for Review filed on January 16, 2012 by Unimex Micro-Electronics GmBH to seek the refund of the amount of P2,458,999.00, representing assessed customs duties paid "under protest".

Petitioner Unimex Micro-Electronics GmBH ("Unimex" for brevity) is a corporation formed, organized and existing under the laws of Germany; while respondent is the Republic of the Philippines, as represented by the Bureau of Customs (BOC), impleaded herein as the agency of the Government of the

Republic of the Philippines that rendered the assailed Decision dated December 2, 2011.[1]

As stated in the parties' Joint Stipulation of Facts[2] and as adopted by the parties from the ruling of the Supreme Court in the case of *Republic of the Philippines, represented by the Commissioner of Customs vs. Unimex Micro-Electronics GmBH*[3], the facts of this case are as follows:

Sometime in April 1985, Unimex Micro-Electronics GmBH shipped a 40-foot container and 171 cartons of Atari game computer cartridges, duplicators, expanders, remote controllers, parts and accessories to Handyware Phils., Inc. ("Handyware" for brevity). Don Tim Shipping Corporation transported the goods with Evergreen Marine Corporation as shipping agent.

After the shipment arrived in the Port of Manila on July 9, 1985, the Bureau of Customs (BOC) agents discovered that it did not tally with the description appearing on the cargo manifest. As a result, BOC instituted seizure proceedings against Handyware and later issued a warrant of seizure and detention against the shipment.

On June 5, 1987, the Collector of Customs issued a default order against Handyware for failing to appear in the seizure proceedings. After an *ex-parte* hearing, the Collector of Customs forfeited the goods in favor of the government.

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[1] Pars. 2.1 and 2.2, Petition for Review, docket, p. 8
[2] Docket, pp. 188-197
[3] G.R. Nos. 166309-10, March 9, 2007, 518 SCRA 19

Subsequently, on June 15, 1987, Unimex (as shipper and owner of the goods) filed a motion to intervene in the seizure proceedings. The Collector of Customs granted the motion but later on declared the June 5, 1987 default order against Handyware as final and executory, thus affirming the goods forfeiture in favor of the government.

Unimex filed a Petition for Review against the Commissioner of Customs (BOC Commissioner) in the Court of Tax Appeals (CTA). This case was docketed as CTA Case No. 4317.

In the Decision dated June 15, 1992, the CTA reversed the forfeiture decree and ordered the release of the subject shipment to Unimex, subject to the payment of customs duties. The CTA Decision became final and executory on July 20, 1992. The Decision states:

> "**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 quality 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."

However, Unimex's counsel failed to secure a writ of execution to enforce the CTA Decision. Instead, Unimex filed separate claims for damages against Don Tim Shipping Corporation and Evergreen Marine Corporation, but both cases were dismissed.

On September 5, 2001, Unimex filed before the CTA a petition for the revival of its June 15, 1992 Decision, docketed as "Unimex Micro-Electronics GmBH vs. Commissioner of Customs", CTA Case No. 6329. It prayed for the immediate release by the BOC of its shipment or, in the alternative, the payment of the shipment's value plus damages. The BOC Commissioner failed to file his answer; hence, he was declared in default.

During the *ex-parte* presentation of Unimex's evidence, the BOC informed the CTA that the subject shipment could no longer be found at its warehouses.

In the Decision dated September 19, 2002, the CTA declared that its June 15, 1992 Decision could no longer be executed due to the loss of Unimex's shipment, so it ordered the BOC Commissioner to pay Unimex the commercial value of the goods based on the prevailing exchange rate at the time of their importation. The dispositive portion of the Decision reads:

> "**WHEREFORE**, premises considered, the instant petition is hereby **PARTIALLY GRANTED**. Accordingly, respondent (Commissioner of Customs) is **ORDERED to PAY** the petitioner (Unimex) 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."

The BOC Commissioner and Unimex filed their separate motions for reconsideration of the above Decision.

In his Motion for Reconsideration, the BOC Commissioner argued that the CTA altered its June 15, 1992 Decision by converting it from an action for specific performance into a money judgment. On the other hand, Unimex contended that the exchange rate prevailing at the time of actual payment should apply. It also argued that the CTA erred in not imposing legal interest on BOC's obligation. Jr

The CTA denied both motions. The BOC Commissioner and Unimex then filed separate petitions in the Court of Appeals (CA). The BOC Commissioner's appeal was docketed as CA-G.R. SP No. 75359 and Unimex's as CA-G.R. SP No. 75366. The CA consolidated the two cases.

On August 30, 2004, the CA dismissed the BOC Commissioner's appeal and granted Unimex's petition.

In CA-G.R. SP No. 75359, the CA held that the BOC Commissioner was liable for the value of the subject shipment as the same was lost while in its custody. On the other hand, in CA-G.R. SP No. 75366, it ruled that the CTA erred in using as basis the prevailing peso-dollar exchange rate at the time of the importation instead of the prevailing rate at the time of actual payment pursuant to Republic Act (RA) No. 4100. It added that Unimex was also entitled to legal interest. According to the CA:

> "Considering that the BOC was grossly negligent in handling the subject shipment, this Court finds Unimex entitled to legal interests. Accordingly, the actual damages thus awarded shall be subject to 6% interest per annum.
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> Be that as it may, such interest shall accrue only from the date of the CTA Decision on 19 September 2002 since it is from that the quantification of Unimex's damages have been reasonably ascertained...
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> xxx xxx xxx
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> Finally, Unimex is likewise entitled to 12% interest per annum in lieu of 6% per annum from the time this Decision becomes final and executory until fully paid, in as much as the interim period is equivalent to a forbearance of credit.
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> xxx xxx xxx
>
> **WHEREFORE**, the appealed Decision, dated 19 September 2002, is hereby **AFFIRMED WITH MODIFICATION** in that the Bureau of Customs is adjudged

> liable to Unimex for the value of the subject shipment in the amount of $466,885.54. The Bureau of Customs' liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment with legal interest thereon at the rate of 6% per annum from 19 September 2002 up to its finality. Upon finality of this Decision, the rate of legal interest shall be 12% per annum until the value of the subject shipment is fully paid."

The BOC Commissioner and Unimex again filed their respective motions for reconsideration of the CA Decision. The Commissioner insisted that the BOC was not liable to Unimex. On the other hand, Unimex's motion sought payment of the goods' value in euros, not in US dollars. It also demanded that the 6% legal interest be reckoned from the date of its judicial demand on June 15, 1987.

On November 30, 2004, the CA denied the BOC Commissioner's Motion for Reconsideration and granted that of Unimex. The decretal portion of its Amended Decision reads:

> "**WHEREFORE**, the appealed Decision, dated 19 September 2002, is hereby **AFFIRMED WITH MODIFICATION** in that the Bureau of Customs is adjudged liable to Unimex for the value of the subject shipment in the amount of Euro 669,982.565. The Bureau of Custom's liability [may be] paid in the Philippine currency, computed at the exchange rate prevailing at the time of actual payment with legal interests thereon at the rate of 6% per annum from 15 June 1987 up to the finality of this Decision. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Decision until the value of the subject shipment is fully paid."

The Republic of the Philippines, as represented by the BOC Commissioner, thereafter filed with the Supreme Court an appeal by certiorari under Rule 45 of the Rules of Court, later docketed as G.R. Nos. 166309-10. The said petition sought to nullify and set aside the above-mentioned Decision of the Court of Appeals dated August 30, 2004 and its Amended Decision of November 30, 2004 in CA-G.R. SP No. 75359 and CA-G.R. SP No. 75366 on the following grounds: (1) the June 15, 1992 CTA judgment could not be altered after it became final and executory; (2) laches has already set in, hence, Unimex's case (reviving the June 15, 1992 CTA judgment) should have been dismissed outright; (3) the legal interest imposed was erroneous; and (4) the government funds cannot be charged with Unimex's claim without a corresponding appropriation.[4]

In its March 9, 2007 Decision, the Supreme Court ruled:

> "**WHEREFORE**, the assailed decisions of the Court of Appeals in CA-G.R. SP Nos. 75359 and 75366 are hereby **AFFIRMED with MODIFICATION**. Petitioner Republic of the Philippines, represented by the Commissioner of the Bureau of Customs, upon payment of the necessary customs duties by respondent Unimex Micro-Electronics GmBH, is hereby ordered to pay respondent the value of the subject shipment in the amount of Euro 669,982.565. Petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment.
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> **SO ORDERED**."

In a Resolution dated December 10, 2007, the Supreme Court clarified that the Bureau of Customs must pay Unimex legal interest at the rate of 6% per annum from September 5, 2001 up to the finality of the decision and 12% per annum from the date of the finality of judgment until it is fully paid, to wit:

> "**WHEREFORE**, the motion for clarification of respondent Unimex Micro-Electronics GmBH is hereby **NOTED** and the March 9, 2007 decision **CLARIFIED** in that legal interest on the amount awarded at the rate of 6% per annum from September 5, 2001 up to the finality of this decision may be imposed and that, thereafter, the rate of

[4] Par. 2, Joint Stipulation of Facts (JSF), docket, pp. 192-193

legal interest shall be 12% per annum until the value of the shipment is fully paid.

No further pleadings shall be entertained herein.

SO ORDERED."

The Supreme Court Decision dated March 9, 2007 (2007 Decision) became final and executory on August 2, 2007 and entry of judgment of the same was made on November 7, 2007.[5]

Upon motion of Unimex, the CTA issued a Writ of Execution dated April 29, 2009, commanding the BOC to pay Unimex the awarded monetary judgment.[6]

Pursuant to the said Writ, the BOC paid on May 25, 2009, the amount of P8,675,200.22. On August 12, 2009, the BOC again paid the amount of P26,000,000.00. The remaining balance to be paid by the BOC to Unimex was at least P50,000,000.00.[7]

Pending the payment of the said balance, the BOC required petitioner to pay the amount of P2,458,999.00 as customs duties. The amount of the assessed custom duty is based on five percent (5%) of the judgment award.[8]

Petitioner paid "under protest" the amount of P2,458,999.00 as customs duties. On March 8, 2010, the BOC paid the amount of P21,000,000.00 to petitioner.[9]

As a remedial measure, Unimex lodged a protest case before the Office of the Law Division, Port of Manila-Bureau of Customs. Thereafter,

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[5] Par. 5, JSF, docket, p. 194
[6] Par. 6, JSF, docket, p. 194
[7] Par. 7, JSF, docket, p. 194
[8] Par. 8, JSF, docket, pp. 194-195
[9] Par. 10, JSF, docket, p. 195

on January 21, 2011, the Port of Manila, through District Collector Atty. Rogel Gatchalian, issued a decision denying the protest case of Unimex. The dispositive portion of said decision states:[10]

> "Wherefore, premises considered, it is hereby ordered and decreed that the instant protest of Unimex Micro Electronics GmBH be DENIED for lack of merit.
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> Let copies of this Decision be furnished all parties and offices for their information and guidance.
>
> SO ORDERED."

Unimex then elevated the said protest case to the Office of the Commissioner of the Bureau of Customs *via* the filing of an appeal thereof. Eventually, on December 2, 2011, the Office of the Commissioner of the Bureau of Customs issued the assailed decision affirming the earlier decision of the District Collector of the Port of Manila. The dispositive portion of said decision is quoted as follows:[11]

> "Wherefore, premises considered, the instant appeal of protestant UNIMEX MICRO-ELECTRONICS GmBH is DISMISSED. Accordingly, the Decision dated 21 January 2011 of the District Collector POM, is AFFIRMED."

Thus, petitioner appealed the decision of the BOC to this Court through the instant Petition for Review filed on January 16, 2012.

Respondent filed his Answer on March 5, 2012[12] and interposed the following special and affirmative defenses:

> **"The instant Petition must be dismissed outright for being barred by *res judicata***

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[10] Par. 11, JSF, docket, p. 195
[11] Par. 12, JSF, docket, p. 196
[12] Docket, pp. 108-134

22. Petitioner essentially argues that the BOC has no legal and factual basis to impose the payment of customs duties, which was ordered by the Supreme Court, in the case entitled *'Republic of the Philippines vs. Unimex Micro-Electronics, GmBH, G.R. No. 166309-10 dated 9 March 2007'*

23. Petitioner is greatly mistaken.

24. The very basis for the BOC's imposition of customs duties is the above-mentioned 9 March 2007 case itself, which was decided by no less than the Supreme Court. In said case, the Supreme Court enjoined herein petitioner to pay BOC the necessary customs duties, to wit:

> **WHEREFORE**, the assailed decisions of the Court of Appeals in CA-G.R. Nos. 75359 and 75366 are hereby **AFFIRMED with MODIFICATION**. Petitioner Republic of the Philippines, represented by the Commissioner of the Bureau of Customs, **upon payment of the necessary customs duties by respondent Unimex Micro-Electronics GmBH**, is hereby ordered to pay respondent the value of the subject shipment in the amount of Euro 669,982.565. Petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment.
>
> **SO ORDERED**.

25. It is worthy to stress that the cited Decision became final and executory on 2 August 2007 and entry of judgment of the same was made on 7 November 2007.

26. Petitioner may argue that its liability as to the payment of customs duties was merely mentioned in the dispositive portion of the 9 March 2007 Decision of the Supreme Court. The mere mention of the same was due to the fact that the said case involved a revival of the 15 June 1992 Decision of the CTA which has already become final and executory on 20 July 1992. This does not mean that the BOC's imposition of customs duties already lacks sufficient basis.

27. Petitioner must be reminded of the principle of *res judicata*, specifically the principle of conclusiveness of judgment, since the issue raised by petitioner has already been adjudicated in the 9 March 2007 Decision of the Supreme Court.

28. In order for the principle of conclusiveness of judgment to apply, there is no necessity that there be similarity in the causes of action. What is important though is that **the fact or matter in issue in the second action was** directly adjudicated or **necessarily involved in the determination of the first action**.

29. A relevant case is that of ***Prudential Bank (now Bank of the Philippine Islands) vs. Mauricio*** where the Supreme Court elucidated on the concept and effects of the doctrine of *res judicata*, thus:

> The doctrine of *res judicata* is provided in Section 47, Rule 39 of the Rules of Court:
>
> **SEC. 47. *Effect of judgments or final orders.*** - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> xxxx
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> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
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> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The doctrine of *res judicata* thus lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the parties and their privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) **Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether the claim or demand, purpose, or subject matter of the two suits is the same or not.** These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. In speaking of these cases, the first general rule above stated, and which corresponds to the aforequoted paragraph (b) of Section 47, is referred to as 'bar by former judgment' while **the second general rule, which is embodied in paragraph (c) of the same section, is known as 'conclusiveness of judgment'**.

In *Lopez vs. Reyes,* we further elaborated he distinction between the two:

> The doctrine of *res judicata* has two aspects. The first is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. **The second aspect is that it precludes the relitigation of a particular fact or issues in another action between the same parties on a different claim or cause of action.**
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> **The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in (a) former action (is) commonly applied to all matters essentially connected with the subject matter of the litigation. <u>Thus, it extends to questions 'necessarily involved in an issue, and necessarily</u>**

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> **adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself. xxx**' (Italics supplied.)

30. In this case, a review of the factual background of the 2007 Supreme Court Decision will reveal that petitioner is indeed liable for customs duties by reason of the importation of the subject cargo to the Philippines. Respondent illustrates.

31. In the 1992 CTA Decision, the CTA reversed the order of forfeiture because the cargo was merely erroneously described in the Inward Foreign Cargo Manifest, and therefore not subject to forfeiture, and the liability thereof is borne by the vessel (its master or owner). As to the failure to secure the Central Bank Release Certificate, the CTA explained that the consignee (Handyware Philippines, Inc.) and the owner of the importation (herein petitioner) cannot comply with the Central Bank Regulations due to restrictions made by the custom's agent against verification of the goods after arrival, simply because of the shipping agent's fault of misdeclaring the goods in the cargo manifest. Consequently, the CTA ordered the release of the goods (cargo) to petitioner subject to the condition that correct duties, taxes, fees and other charges thereon be paid to the Bureau of Customs. The Decision reads:

> **WHEREFORE**, the decree of forfeiture of respondent Commissioner of Customs is hereby reversed and the subject shipment 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 quality 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 on Central Bank Release Certificate.
>
> **SO ORDERED**.

32. Thereafter, in its Decision of 19 September 2002, the CTA declared that its 15 June 1992 Decision could no longer be executed due to the loss of petitioner's cargo. So, it ordered the BOC Commissioner to pay petitioner the commercial value of the goods based on the prevailing exchange rate at the time of their importation, instead. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the instant petition is **PARTIALLY GRANTED**. Accordingly, [petitioner] is **ORDERED to PAY** [respondent] 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.

33. When elevated to the Court of Appeals, the said court affirmed with modification the CTA Decision, *viz:*

> **WHEREFORE**, the appealed Decision, dated 19 September 2002, is hereby ***AFFIRMED WITH MODIFICATION*** in that the Bureau of Customs is adjudged liable to Unimex for the value of the subject shipment in the amount of $466,885.54. The Bureau of Customs' liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment with legal interest thereon at the rate of 6% per annum from 19 September 2002 up to its finality. Upon finality of this Decision, the rate of legal interest shall be 12% per annum until the value of the subject shipment is fully paid.

34. Thereafter, the Court of Appeals' Decision was appealed to the Supreme Court. In its 2007 Decision, the Supreme Court ruled in this wise:

> **WHEREFORE,** the assailed decisions of the Court of Appeals in CA-G.R. SP Nos. 75359 and 75336 are hereby **AFFIRMED with MODIFICATION**. Petitioner Republic of the Philippines, represented by the Commissioner of the Bureau of Customs, **upon payment of the necessary customs duties by respondent Unimex Micro-Elecronics GmBH**, is hereby ordered to pay respondent the value of the subject shipment in the amount of Euro 669,982.565. Petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment.
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> **SO ORDERED**.

35. However, instead of questioning the said Supreme Court Decision imposing upon it the obligation to pay the necessary customs duties, petitioner filed a Motion for Clarification on whether its is entitled to legal interest.

36. Thus, in a Resolution dated 10 December 2007, the Supreme Court held that legal interest on the amount awarded at the rate 6% per annum from September 5, 2001 up to the finality of the decision may be imposed and that, thereafter, the legal interest shall be 12% per annum until the value of the shipment is fully paid.

37. From the foregoing, it clearly reveals that the previous case already contained a discussion of petitioner's obligation to pay customs duties. The same issue is once again being brought to inquiry by the petitioner in this Petition.

38. Therefore, since the issue on petitioner's obligation to pay customs duties has already been adjudicated in the 15 June 1992 CTA Decision, which became **final and executory on 20 July 1992**, the principle of conclusiveness of judgment has already set in. Consequently, the same cannot again be litigated in the present petition. On this score alone, the Petition must be dismissed.

39. Nonetheless, respondent deems it wise to discuss the other issues raised by petitioner.

The 2007 Supreme Court Decision took into consideration the fact of loss (of) the petitioner's cargo.

40. Petitioner maintains that the portion of the Supreme Court Decision, pertaining to the payment of duties and taxes, is a direct quotation from CTA Case No. 6329.

41. Petitioner misleads.

42. It bears stress that the Supreme Court Decision was rendered **on 9 March 2007** while CTA Case No. 6329 mentioned by petitioner refers to the '*Motion to Cite in Contempt Commissioner Lito Alvarez of the Bureau of Customs et al.*' which was filed with this Honorable Court **sometime in June of 2011**. Thus, it is inconceivable how the Supreme Court allegedly quoted in its 2007 Decision a portion of the CTA Case No. 6329 which was filed four (4) years after the said Decision.

43. Petitioner avers that at the time the 1992 Decision of the CTA was rendered, it was not yet established that the subject goods were lost. Thus, petitioner asserts that the 9 March 2007 Decision of the Supreme Court was premised on the fact that the goods were still in the possession of the BOC, as if averring that if the goods were already lost, the Supreme Court would have decided otherwise. Simply put, if petitioner's goods were lost, Supreme Court would not have ordered petitioner to pay customs duties.

44. Petitioner is misguided.

45. It is illuminating to note that while the 15 June 1992 CTA Decision (CTA Case No. 4317) is premised on the fact that the goods are still in the possession of the BOC, the CTA, however modified its decision, since the same could no longer be executed <u>due to the loss of petitioner's shipment.</u>

46. Because of this development, the CTA ordered the BOC Commissioner to pay petitioner the commercial value of the goods based on the prevailing exchange rate at the

time of their importation, instead of delivering the cargo. The BOC's obligation to pay the value of the goods was, in fact, upheld by the Supreme Court. To be sure, the Supreme Court took note of the fact of loss of petitioner's shipment and even made a discussion on the BOC's negligence in the safekeeping of the goods which does not bind the government so as not to prejudice petitioner, *viz:*

> 'In the case at bar, parties do not dispute the fact that after the June 15, 1992 CTA decision became final and executor, **respondent's goods were inexplicably lost while under the BOC's custody**. Certainly, this fact presented a supervening event warranting the modification of the CTA decision. Even if the CTA had maintained its original decision, still petitioner would have been unable to comply with it for the obvious reason that **there was nothing more to deliver to respondent.**
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> Given the attendant circumstances, laches cannot stall respondent's right to recover what is due to it especially where BOC's negligence in the safekeeping of the goods appears indubitable. **There is no denying that BOC exhibited gross carelessness and ineptitude in the performance of its duty as it could not even explain why or how the goods vanished while in its custody.** With this, it is difficult to exonerate petitioner from liability; otherwise, we would countenance a wrong and exacerbate respondent's loss which to this day has remained unrecompensed.
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47. Without a doubt, petitioner's submission that the Supreme Court Decision failed to emphasize that the premise has been changed with the subsequent loss of the cargo is erroneous.

Depreciation is not a factor in determining dutiable value.

48. Next, petitioner pointed out that the value of the cargo has shrunk to five percent (5%) of its original value, which the District Collector has ignored. Perhaps, petitioner is suggesting that the computation of the customs duties must be based on the depreciated value of the goods. Unfortunately, the same has no basis in law.

49. The rules of customs valuation is provided under Section 201 of PD. No. 1464 otherwise known as the Tariffs and Customs Code of the Philippines (TCCP). Depreciation is not a factor in determining dutiable value.

50. In fact, in case of ***Secretary of Finance, vs. Oro Maura Shipping Lines***, the Supreme Court reversed the imposition of unpaid customs duties based on the depreciated value, and ruled that the same must be made on the entered value, without allowance for deprecation. The Supreme Court explained:

> Neither can the respondent hide behind the excuse that the vessel's dutiable value at P1,100,000.00 was approved by MARINA *via* the Authority to Import, taking into consideration the vessel's depreciation brought about by its ordinary wear and tear. In the first place, **<u>we observe that nowhere in the TCCP does it state that the depreciated value of an imported item can be used as the basis to determine an imported item's dutiable value.</u>** Section 201 of PD No. 1464 (the Tariff and Customs Code of 1978) 17 in this regard provides"

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Petitioner's cargo was imported to the country, making it liable for customs duties.

51. It is petitioner's position that there was no actual importation that took place since the goods disappeared

as they were never released or withdrawn from the customhouse. Petitioner claims that because of this, the process of importation was never completed. Thus, petitioner concludes that there was no factual and legal basis to charge it with said customs duties.

52. Petitioner, once again, errs.

53. The importer's obligation to pay customs duties accrues at the time the imported articles enters the Philippine jurisdiction, and the goods will only be released upon payment of the necessary customs duties, taxes and other charges. Thus, the need to pay customs duties is not subject to the condition that the goods will be received by owner, or the consignee, as the case maybe. In other words, regardless of any supervening event that befalls the imported articles, the loss of petitioner's cargo as in this case, the same is still liable for customs duties.

54. The disposition of the BOC on this note is enlightening, thus:

> Moreover, the contention of protestant Unimex that payment of duties can only be had upon termination of importation is utterly absurd. As defined under Section 1203 of the TCCP, as amended, termination of importation can only be had if the goods are released **upon payment of duties and taxes and other charges**. Hence, it is highly untenable to argue that duties for the subject articles cannot be collected considering that the goods were not in any way released. The articles of importation can only be released precisely after payment of duties and taxes and other charges.
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> At this juncture, it is crystal clear that protestant had imported the subject shipment consisting of 171 cartons of Atari game computer cartridges, duplicators, expanders, remote, controllers, parts and accessories intended for its consignee Handyware Phils., Inc., which arrived at the Port of Manila on 09 July 1985. Accordingly, the subject shipment was indubitably imported into the country, and in fact actually unladen, and, thus,

> unmistakably liable for the corresponding duties and taxes, regardless of the subsequent intervening events that transpired after its arrival and discharging from the carrying vessel.
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> xxx xxx xxx

55. In its vain attempt to evade payment of customs duties petitioner argues that the original cargo is exempt from customs duties as it is in the nature of toys and is 'freely importable' as allegedly declared by then BOC Accounting Supervisor, Mrs. Andrea Balova. Petitioner, in support of this contention cited an alleged copy of the 1st Indorsement issued by the BOC attesting to said fact and marked as Annex 'A' of the instant Petition.

56. Unfortunately for petitioner, Annex 'A' of the instant Petition refers to the assailed Decision of the BOC. Nowhere from the decision was the said Indorsement mentioned.

57. Nonetheless, to address petitioner's concern, reference is made to Annex 'B' where it made mention of the proposed decision of Collector Ampil citing the testimony of Mrs. Andrea Balova on the said matter.

58. Apparently, petitioner misconstrues the same.

59. By holding that the goods are 'freely importable', it does not mean that the same are exempt from customs duties. What Mrs. Balova meant was that the goods are not illegal importations. As a matter of fact, the findings of Collector Ampil ordered the release of the goods upon full payment of customs duties, and taxes, fees and other lawful charges due thereon, *viz*:

> Finally, the possible violation of Section 2530 (f) and (1)-1 to 5 of the real issue of this case have been extensively proven by the prosecution of the RCVI-Exh. '9' re-hearing as certified by Mrs. Teresita Sia, Acting Chief, VCD to be classified under Tariff headings 92.11-900 and 92.12-190 both having a duty rate of 50%. **As testified by Mrs. Andrea Balova, Acting Supervisor of Section 14, the shipment fall under the category of 'TOYS' and that they are FREELY**

IMPORTABLE and therefore <u>not illegal importations</u> form the very beginning as originally alleged. As far as possible violation of Central Bank regulations, technically, both Handyware and Unimex were rendered incapable of obtaining the required Central Bank Release by virtue of the express provisions of its purchase order agreement-pre-condition to see, quality accept then open a letter of credit which would be the basis to apply for the issuance of the Central Bank Release Certificate, under documents against acceptance (D/A) or presentation of documents (D/F) basis.

xxx xxx xxx

WHEREFORE, by virtue of the authority vested in me by law, it is hereby ordered and decreed that the warrant of seizure and detention issued against the shipment be **LIFTED** and that **claimant-intervenor be allowed, as manifested, to release the subject shipment <u>upon full payment of customs charges due thereon</u>** and also subject to the submission of Central Bank Release Certificate.

60. To be sure, freely importable or exportable commodities refer to those commodities whose importation or exportation is neither regulated nor prohibited. The importation or exportation of these commodities may be effected without the prior approval of or clearance from any government agency.

The computation of the customs duties was based on the value of the cargo, the judgment award imposed by the Supreme Court.

61. Petitioner submits that the District Collector of Customs incorrectly imposed customs duties on the judgment award for actual damages not on the cargo valuation, and since the cargo has been lost, it is no longer necessary to pay the customs duties. Jc

62. Again, petitioner is misguided.

63. The amount of damages or the judgment award imposed by the Supreme Court refers to no other than the value of the cargo, *viz*:

> **WHEREFORE**, the assailed decision of the Court of Appeals in CA-G.R. Nos. 75359 and 75366 are hereby **AFFIRMED with MODIFICATION**. Petitioner Republic of the Philippines, represented by the Commissioner of the Bureau of Customs, upon payment of the necessary customs duties by respondent Unimex Micro-Electronics GmBH, is hereby ordered to pay respondent the **value of the subject shipment in the amount of Euro 669,982.565. Petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment**.
>
> **SO ORDERED.**

64. Based from said judgment award, BOC computed the necessary customs duties to be paid by petitioner in the amount of P2,457,998.73 as shown in Annex (of) 'F' of the Petition.

65. Hence, no other conclusion can be had but that the customs duties were computed based on the cargo valuation.

66. All told, the BOC correctly dismissed the protest of petitioner as regards its claim for reimbursement."

Thereafter, a Notice of Pre-Trial Conference was issued by this Court on March 6, 2012, setting the case for pre-trial conference on April 12, 2012.[13] Petitioner filed its Pre-Trial Brief[14] on March 30, 2012; while respondent filed his Pre-trial Brief[15] on April 4, 2012.

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[13] Docket, p. 152
[14] Docket, pp. 153-167
[15] Docket, pp. 169-180

During the hearing held on April 12, 2012, the parties' counsel manifested that there are no questions of facts in this case and that only legal issues are involved. Accordingly, and upon motion of the parties' counsel, the parties were granted thirty (30) days or until May 12, 2012 to submit their Joint Stipulation of Facts and Issues, which shall include a prayer that this case be submitted for decision.[16]

On May 14, 2012, the parties filed with this Court their Joint Stipulation of Facts[17], which was later approved in a Resolution[18] dated May 16, 2012. In the same Resolution, the pre-trial was considered terminated and the parties were given thirty (30) days to file their memoranda. Also, it was stated that the case shall be considered submitted for decision upon receipt of the memoranda of the parties or the expiration of the period granted.

The case was submitted for decision on June 29, 2012, considering petitioner's Memorandum filed on June 14, 2012 and respondent's Memorandum filed on June 26, 2012.[19]

The legal issues presented by the parties may be summarized as follows:

> "1. Whether or not it is still necessary to pay custom duties since the subject goods had already been lost as established by the 1988 SGS Report and as admitted by the Bureau of Customs;
>
> 2. Whether or not the instant Petition is barred by the principle of *res judicata;*

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[16] Minutes of Hearing held on April 12, 2012, docket, p. 187
[17] Docket, pp. 188-197
[18] Docket, p. 200
[19] Docket, p. 250

3. Whether or not depreciation is a factor in determining the dutiable value of the cargo;

4. Whether or not the subject Atari goods are exempt from customs duties on the ground that they are in the nature of 'toys'; and

5. Whether or not the District Collector of Customs incorrectly imposed customs duties on a judgment award for actual damages and not on the cargo."

Petitioner alleges that the subject Atari goods have not been released nor withdrawn from the customhouse of the Bureau of Customs. Thus, according to petitioner, there are no legal and factual bases for petitioner to be charged with customs duties.

Furthermore, petitioner maintains that there was no actual importation that took place since the goods disappeared in 1987, citing Section 100 of Presidential Decree No. 1464 otherwise known as the "Tariff and Customs Code of the Philippines". Petitioner explains that the importation process includes the taking out of the goods from the Bureau of Customs to the Philippines for purposes of a commercial transaction. In this case, there was no actual importation that took place since the subject goods have not been released nor withdrawn from the customhouse of the Bureau of Customs.

Petitioner avers that the Decision of the Supreme Court is in the nature of a judgment award. The District Collector of Customs of the Port of Manila incorrectly imposed customs duties on a judgment award for actual damages rather than on the cargo. The customs duties in the amount of P2,458,034.00 was paid "under protest" in accordance with the Decision of the Supreme Court in G.R. No. 166309-10. According to petitioner, the Supreme Court, the Court of Appeals, and the Court of Tax Appeals based *Jc* the requirement of paying the customs duties from the 1992 Decision of the Court of Tax Appeals in CTA Case No. 4317. At the time of promulgation of the said Decision on June 15, 1992, the loss of the subject cargo has not yet been established.

Petitioner concludes that since the Supreme Court Decision of 2007 has converted the obligation of the Republic of the Philippines from one involving the release of the goods to one involving the payment of the value of the goods in the form of an award for actual damages subject to interest, there is no basis to pay customs duties. It is no longer "necessary" to pay customs duties because the cargo has been lost as early as 1987.

From all the foregoing arguments, it appears that the same had already been resolved in CTA Case No. 6329, as affirmed by the Supreme Court in G.R. Nos. 166309-10. Thus, the doctrine of *res judicata* is found applicable.

Res judicata pervades every organized system of jurisprudence and is founded upon two grounds embodied in various maxims of common law, namely: (1) public policy and necessity, which makes it to the interest of the State that there should be an end to litigation – *republicae ut sit litium*; and (2) the hardship on the individual of being vexed twice for the same cause – *nemo debet bis vexari et eadem causa*. A conflicting doctrine would subject the public peace and quiet to the will and dereliction of individuals and prefer and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.[24]

In this case, the ruling of this Court in CTA Case No. 6329, as affirmed with modification by the Supreme Court in G.R. Nos. 166309-10, already became final and executory. Likewise, the Court of Tax Appeals had jurisdiction over the subject matter and the parties when it rendered judgment on the merits of the case. Also, the parties in CTA Case No. 6329 and G.R. Nos. 166309-10 are the same as well as some of the issues in each case.

Significantly, while it appears that the instant Petition is an appeal of the decision of the Customs Commissioner dated December 2, 2011, the allegations raised by petitioner would show that the Petition in part assailed what had already been resolved by this Court in CTA Case No. 6329 as affirmed by the Supreme Court in G.R. Nos. 166309-10.

In view of petitioner's filing of its petition for revival of judgment in CTA Case No. 6329, the Court determined the following issues:

> "(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 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

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[24] *Ibid.*

the regalement of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness.[20]

The High Court made the following pronouncements in the case of *Heirs of Trinidad De Leon Vda. de Roxas vs. Court of Appeals, et al.*[21]:

> "(A)n existing final judgment or decree – rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction acting upon a matter within its authority – is conclusive on the rights of the parties and their privies. This ruling holds in all other actions or suits, in the same or any other judicial tribunal of concurrent jurisdiction, touching on the points or matters in issue in the first suit.
>
> xxx xxx xxx
>
> **Courts will simply refuse to reopen what has been decided. They will not allow the same parties or their privies to litigate anew a question once it has been considered and decided with finality.** Litigations must end and terminate sometime and somewhere. The effective and efficient administration of justice requires that once a judgment has become final, the prevailing party should not be deprived of the fruits of the verdict by subsequent suits on the same issues filed by the same parties." *(Emphasis supplied)*

Res judicata embraces two concepts, namely: (1) bar by prior judgment as enunciated in Rule 39, Section 47(b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47(c).[22] There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this

[20] *Fels Energy, Inc. vs. The Province of Batangas and the Office of the Provincial Assessor of Batangas*, G.R. No. 168557, February 16, 2007; *National Power Corporation vs. Local Board of Assessment Appeals of Batangas, et al.,* G.R. No. 170628, February 16, 2007
[21] G.R. No. 138660, February 5, 2004, citing *Buaya vs. Stronghold Insurance Co., Inc.*, G.R. No. 139020, October 11, 2000, 342 SCRA 576
[22] *Social Security Commission vs. Rizal Poultry and Livestock Assciation, Inc., et al.,* G.R. No. 167050, June 1, 2011

instance, the judgment in the first case constitutes an absolute bar to the second action.

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.

Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.[23]

The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter,

[23] *Ibid.*

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

In resolving the first issue, the Court said:

"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.**

xxx xxx xxx

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." *(Emphasis supplied)*

A further examination of this Court's ruling in CTA Case No. 6329 would also show that the shipment loss actually caused the modification of the Court's original ruling in CTA Case No. 4317 from the "release of the subject importation" to "the payment of 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**" in CTA Case No. 6329. Clearly, it is impossible for the Court not to have considered the shipment loss in ruling for the payment of the proper taxes, duties, fees and other charges on the same shipment or importation.

Likewise, in view of the appeal of the ruling of the Court of Appeals in CA-G.R. SP No. 75359 and CA-G.R. SP No. 75366 before the Supreme Court docketed as G.R. Nos. 166309-10, the High Court adopted the ruling of this Court as to the payment of the proper taxes, duties, fees and other charges on the shipment despite its being lost as early as 1987. The dispositive portion of the afore-mentioned Supreme Court ruling reads:

> "**WHEREFORE**, the assailed decisions of the Court of Appeals in CA-G.R. SP Nos. 75359 and 75366 are hereby **AFFIRMED** with **MODIFICATION**. Petitioner Republic of the Philippines, represented by the Commissioner of the Bureau of Customs, **upon payment of the necessary customs duties by respondent Unimex Micro-Electronics GmBH**, is hereby ordered to pay respondent the value of the subject shipment in the amount of Euro 669,982.565. Petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment.
>
> **SO ORDERED.**" *(Emphasis supplied)*

The Supreme Court, being the court of last resort, is the final arbiter of all legal questions properly brought before it and that its decision in any given case constitutes the law of that particular case. Once its judgment becomes final it is binding on all inferior courts, and hence beyond their power and authority to alter or modify.[25]

Accordingly, the judgment of this Court in CTA Case No. 6329 as modified and affirmed by the Court of Appeals in CA-G.R. SP No. 75359 and CA-G.R. SP No. 75366 and the Supreme Court in G.R. Nos. 166309-10 on petitioner's liability to pay the necessary customs duties despite the lost of the shipment is already conclusive on the instant case.

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[25] *Bueno Industrial and Development Corporation, et al. vs. R.C. Aquino Timber and Plywood Co., Inc., et al.*, G.R. No. L-25747, August 21, 1980

Also, petitioner argued that the District Collector of the Port of Manila purportedly ignored the fact that the goods have been lost as early as 1987 or at least the value of the original cargo has shrunk to five percent (5%) of its original value by 1987. In other words, the phrase "upon payment of the necessary custom duties" as contained in the Decision of the Supreme Court is no longer material.

Contrary to the foregoing arguments, the Court finds that depreciation is not a factor in determining the dutiable value of the subject shipment.

This Court hereunder quotes the ruling of the Highest Tribunal in the case of *Secretary of Finance vs. Oro Maura Shipping Lines*[26], wherein the High Court held:

> "Neither can the respondent hide behind the excuse that the vessel's dutiable value at P1,100,000.00 was approved by MARINA via the Authority to Import, taking into consideration the vessel's depreciation brought about by its ordinary wear and tear. **In the first place, we observe that nowhere in the TCCP does it state that the depreciated value of an imported item can be used as the basis to determine an imported item's dutiable value**. Section 201 of P.D. No. 1464 (the Tariff and Customs Code of 1978) in this regard provides: xxx" *(Emphasis supplied)*

Furthermore, it bears to note that "customs duty attaches when goods are 'imported', or when they are brought within customs jurisdiction with intention to unlade, the general principle of law being that duty attaches to imports immediately on their arrival within the limits of our ports, regardless of any destruction that may occur after arrival."[27] The government is entitled to

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[26] G.R. No. 156946 July 15, 2009

[27] Nague, Handbook on the Tariff and Customs Code of the Philippines as amended, and the Customs Broker Act of 2004 (R. A. 9280) and its Implementing Rules and Regulations, First Edition p. 314 citing 25 C.J.S. "Customs Duties," §22

maintain an action to recover duties upon imports as a personal indebtedness of the importers. The personal indebtedness of the importer is not discharged by the giving of additional securities for the payment of the duties or by the unauthorized or illegal removal of the goods from the custody of the customhouse officers.[28] Thus, petitioner's allegation that the phrase "upon payment of the necessary custom duties" as contained in the Decision of the Supreme Court is no longer material considering that the goods have been lost as early as 1987 is clearly bereft of merit.

Moving on to the next issue, petitioner claims that the original cargo is exempt from customs duties as it is in the nature of "Toys".

Petitioner anchors its claim of exemption on the evaluation of Mrs. Andrea Baleva, Bureau of Customs Accounting Supervisor, who declared that the various samples taken from the original importation fall under the category of toys and are "freely importable" as per the 1st Indorsement issued by the Bureau of Customs.

The Court finds the argument misplaced.

Let it be pointed out that in the said 1st Indorsement, Mrs. Baleva mentioned that the samples from the actual importation fall under the category of "toys" and that they are "freely importable" considering that they are not pinball, slot machine, coin-operated or similar devices which are banned under Presidential Decree (PD) No. 519.[29]

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[28] Nague, Handbook on the Tariff and Customs Code of the Philippines as amended, and the Customs Broker Act of 2004 (R. A. 9280) and its Implementing Rules and Regulations, First Edition, p. 315 citing 15 Am. Jur. "Customs Duties," §93

[29] Annex "H", Petition for Review

Notably, being "freely importable" does not necessarily mean that the commodities are exempt from custom duties for under Section 7(1) of Central Bank Circular No. 1389, "freely importable commodities" are those the importations of which are neither regulated nor prohibited and may be effected without the prior approval of or clearance from any government agency. In fact, the said 1st Indorsement cited by petitioner actually recommended that the importer be allowed to take delivery of subject shipment by paying the duties and taxes plus all other lawful charges due the Government. Hence, there is no reason for this Court to consider petitioner's claim for exemption from customs duties on the mere basis that the original cargo is in the nature of "Toys" which are "freely importable".

Lastly, on petitioner's allegation that respondent imposed custom duties on the monetary award rendered by the Supreme Court for actual damages and not on the cargo, respondent opposed the same by averring that the amount of damages or the judgment award imposed by the Supreme Court refers to no other than the value of the cargo.

Notably, in CTA Case No. 6329, the Court determined the value of the cargo at the time of its arrival in Manila on July 9, 1985 based on the evidence submitted by petitioner in CTA Case No. 4317, which was later affirmed by the Court of Appeals with modification in as much as it converted the amount determined in CTA Case No. 6329 from Deutschemark to Euro. The value of the shipment then amounted to Euro 669,982,565, which was thereafter affirmed by the Supreme Court in G.R. Nos. 166309-10.

The Supreme Court has consistently held that the value of imported articles as fixed by the customs authorities in the discharge of their function of assessing and collecting the lawful revenues justly on imported articles and confirmed by the customs commissioner and/or revenue commissioner is presumed to be correct and therefore conclusive in the absence of fraud or illegality or of an affirmative showing by the protesting importer that the customs authorities in fixing or assessing the value of the importation proceeded upon a wrong principle and contrary to law.[30]

As stated by the High Court in *Collector of Internal Revenue vs. Bohol Land Transportation, Co.*[31], "the determination of the tax deficiency by the Government has *prima facie* validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct."

In this case, petitioner failed to support its allegation that the imposition has no factual and legal basis. Since no evidence was presented from which the Court can verify the truthfulness of the allegations, the presumption of correctness of respondent's imposition must be upheld.

At this juncture, it must be stressed that "customs duties" is the name given to taxes on the importation and exportation of commodities, the tariff or tax assessed upon merchandise imported from, or exported to, a foreign country. Any claim for refund of customs duties, therefore, takes the nature of tax exemptions that must be construed *strictissimi juris* against the

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[30] *The Coca-Cola Export Corporation vs. The Commissioner of Internal Revenue, et al.,* G.R. No. L-23604, March 15, 1974

[31] 107 Phil. 965

claimants and liberally in favor of the taxing authority. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed. Any reduction or diminution thereof with respect to its mode or its rate must be strictly construed, and the same must be couched in clear and unmistakable terms in order that it may be applied.[32]

Considering that petitioner failed to prove entitlement to the refund of customs duties allegedly paid under protest, the instant Petition for Review must necessarily fail.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[32] *Nestle Philippines, Inc., (Formerly Filipro, Inc.) vs. Honorable Court of Appeals, Court of Tax Appeals and Commissioner of Customs*, G.R. No. 134114, July 6, 2001

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice