REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILTRUST BANK,
Petitioner,

- versus - C.T.A. CASE NO. 5468

THE COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated: AUG 25 1998

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DECISION

This is an appeal from the decision of the Commissioner of Customs denying petitioner's request to have the shipment consisting of 12 x 20 containers STC: 7,680 bags 192 MT Daelim Poly HDPE 5507 covered by Entry No. 175357-95 released upon its payment of duties and taxes due thereon.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines and is engaged in the banking business (TSN, July 31, 1997, p. 37).

It appears from the records of this case that petitioner was requested by AD Mfg. Phils. Inc. (AD, for brevity), to open a letter of credit to finance the latter's importations. To make it formal, Philippine Bonded Warehouse Services Inc., for the account of AD,

116

filed an "Application and Agreement for Commercial Letter of Credit" with the petitioner. This application was approved by petitioner and consequently, a letter of credit was issued in favor of the seller Ssangyong Singapore PTE Ltd. for full invoice value up to an aggregate amount of US$464,800.00 covering the merchandise or goods that are to be shipped to the Philippines (Exhibit A, CTA records, p. 53).

The shipments eventually arrived in Manila together with the bills of lading and commercial invoices which were all consigned to the "Order of Philtrust Bank", with notification to Philippine Bonded Warehouse Services, Inc. for the account of AD Manufacturing Phils. Inc. (Exhs. B, B-1, B-2, C, C-1, C-2, D-1, D-1-a, D-1-b, D-2, D-2-a, D-2-b).

Pursuant to the Trust Receipt Agreements executed between petitioner and AD on February 8, 1995 and February 13, 1995, the latter was given the authority to file the warehousing entry for the possession of shipments and documents with the Bureau of Customs (Exhs. D, E).

Some of the shipments were released upon payment of duties and taxes but due to AD's alleged outstanding unpaid accounts with the Bureau of Customs in connection with its previous importations, the latter agency issued

117

a "Hold Order" on the subject shipment. Respondent issued the hold order, pursuant to Section 1508 of the Tariff and Customs Code, as amended, wherein it is stated that "(W)henever any importer, except the government has an outstanding and demandable account with the Bureau of Customs, the Collector shall hold the delivery of any article imported or consigned to such importer. x x x (Underscoring supplied)

In a letter, dated March 29, 1995, petitioner, claiming that it was the consignee of the subject shipment, requested the Commissioner of Customs for the cancellation of the warehousing entry and its conversion to consumption entry so that the necessary duties and taxes thereon can be paid (Exhibit F, CTA records, p. 62).

This letter request was referred to a Committee created by the Commissioner of Customs which upon evaluation, issued a Memorandum, dated October 10, 1995 (Exh. 1, CTA records, p. 85), recommending the disapproval of the same based on the perception that petitioner had allegedly indorsed the bills of lading in favor of AD, making the latter the owner of the subject shipment and consequently, section 1508 of the same Code shall now apply (BIR records, pp. 76-80).

On July 1, 1996, petitioner, thru Atty. Armando Padilla, requested the Commissioner of Customs for the clearance of the subject shipment for the same reasons contained in the earlier letters of petitioner; that AD is not the owner of the shipment but merely a trustee thereof by virtue of a trust receipt agreement executed between them, and therefore, the Bureau of Customs cannot hold the shipment and apply Section 1508 of the same Code because the owner thereof is the petitioner itself who has no outstanding obligation with the Bureau (Exh. H, CTA records, pp. 65-66).

On November 28, 1996, respondent denied the request and affirmed the recommendation of the Committee he created. (Exh. J, CTA records, p. 67) A letter of reconsideration was sent by petitioner on December 10, 1996 (Exh. K, CTA, records, p. 68) and the same was likewise denied. On February 26, 1997, counsel for petitioner received a letter from Atty. Magdalena Soriano, Director of the Legal Service of the Bureau of Customs, denying petitioner's request for reconsideration.

Hence, this petition for review filed in this Court on March 7, 1997.

The issue to be resolved thus centers on whether or not respondent is justified in proceeding against the shipment covered by Entry No. 17357-95 on the basis of Section 1508 of the Tariff and Customs Code of the Philippines, as amended.

Petitioner reiterates its contention that AD is not the owner of the shipment but merely a trustee thereof by virtue of a trust receipt arrangement executed between them and therefore, the Bureau of Customs cannot hold the shipment and apply Section 1508 because the owner thereof has no outstanding obligation with the Bureau.

Respondent, on the other hand, advances in his Answer, *inter alia*, the following special and affirmative defenses, thus:

> 1. Petitioner has indorsed the bill of lading in favor of AD Manufacturing Phils. Inc. Pursuant to Section 1203 of the Tariff and Customs Code of the Philippines, all articles imported into the Philippines shall be held to be the property of the person to whom the same are consigned, and the holder of a bill of lading duly indorsed by the consignee therein named, or if consigned to order, by the consignor shall be deemed the consignee thereof. In this case, the shipment in question is consigned to the order of petitioner for the account of AD Manufacturing Phils. Inc., and petitioner has indorsed the bill of lading to the latter. Hence the consignee is AD Manufacturing since it is the holder of the bill of lading duly endorsed by petitioner.
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> 2. The title or authority of AD Manufacturing Phils. Inc. over the shipment in question is not contested. Such shipment could have been released to AD Manufacturing Phils. Inc. pursuant to the warehousing entry it filed

120

covering said shipment if not for the hold order issued against it by the Bureau of Customs because of its outstanding and demandable obligation with the Bureau.

3. Pursuant to Section 1508 of the Tariff and Customs Code, respondent may lawfully hold the delivery of the shipment as AD Manufacturing Phils. Inc. is deemed the consignee thereof. Respondent need not determine the real ownership of the articles imported pursuant to any arrangement that may have been entered into between the consignor and the consignee.

4. The trust receipt agreement between petitioner and AD Manufacturing Phils. Inc. does not preclude a third party who is not privy to said agreement to go against the subject matter of the agreement if said third party has the right to do so. Hence, respondent who is a third party not party to said agreement and has an interest over the subject shipment can proceed against them.

5. In any case, the trust receipt agreement between petitioner and AD Manufacturing Phils. Inc. recognizes the possibility of the goods shipped not being cleared through Customs or the probability of their seizure when it provides that the entrustee is still liable for payment at maturity of any accepted draft, bill of exchange or indebtedness if said situation occurs.

For better understanding, the pertinent provisions of the Tariff and Customs Code, as amended governing the issues involved herein are hereunder quoted, to wit:

"**Section 1508.** ***Authority of the Collector of Customs to Hold the Delivery or Release of Imported Articles*** - <u>Whenever any importer</u>, except the government <u>has an outstanding and demandable account with the Bureau of Customs, the Collector shall hold the delivery of any</u>

> article imported or consigned to such importer unless subsequently authorized by the Commissioner of Customs and upon notice as in seizure cases, he may sell such importation or any portion thereof to cover the outstanding account of such importer, Provided: however, that at any time prior to the sale, the delinquent importer may settle his obligations with the Bureau of Customs, in which case the aforesaid articles maybe delivered upon payment of the corresponding duties ad taxes and compliance with all other legal requirements (Underscoring supplied)
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> "**Section 1203. Owner of Imported Articles.** - All articles imported into the Philippines shall be held to be the property of the person to whom the same are consigned and the holder of a bill of lading duly indorsed by the consignee therein named, or if consigned to order, by the consignor, shall be deemed the consignee thereof (Underscoring ours).

After a careful reading of the facts and circumstances attendant to the case at bar, and painstaking study of the records and provisions of law applicable, this Court holds that respondent did not commit grave abuse of discretion and was justified in proceeding against the subject shipment under Section 1508 of the Tariff and Customs Code. Petitioner is not the owner of subject shipment but AD Mfg. Phils. Inc. by virtue of a letter of credit-trust receipt arrangement executed between them.

It is important to point out that in reviewing the appealed decision of the Collector of Customs, it became imperative for this Court to determine the question of ownership of the subject articles which we are competent to pass upon in order to determine whether the properties levied and distrained by the Collector and forfeited to the Government really belongs to the delinquent taxpayer or to the intervenor (**Carrara Marble Philippines, Inc. vs. Commissioner of Customs, CTA Case No. 5039, May 7, 1996**, citing the case of Castro vs. David, 100 Phil. 454)

Trust receipt is a separate and independent security transaction intended to aid in financing importers whereby the imported goods are held as security by the lending institution for the loan obligation. The case of **Vintola vs. Insular Bank of Asia and America (150 SCRA 578)**, later re-echoed in **Nacu vs. Court of Appeals, 231 SCRA 237** is instructional, to wit:

> "... A letter of credit-trust receipt arrangement is endowed with its own distinctive features and characteristics. Under that set up, a bank extends a loan covered by the letter of credit with the trust receipt as security for the loan. In other words, the transaction involves a loan feature represented by the letter of credit and a security feature which is in the covering trust receipt.
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> x x x x x x x x x
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> A trust receipt, therefore is a security agreement pursuant to which a bank acquires a "security interest" in the goods. It secures an indebtedness and there can be no such thing as security interest that secures no obligation.

123

> As elucidated in Samo vs. People, 5 SCRA 354, a trust receipt is considered as a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization as collateral of the merchandise imported or purchased.

In the case at bar, We agree with the respondent that the trust receipt agreement between Philtrust Bank and AD Mfg. Phils. Inc. merely recognizes the possibility of the goods being subject to seizure, when it is so provided that the liability of the trustee for payment at maturity of any accepted draft, bill of exchange, indebtedness whatsoever shall not be extinguished or modified because the merchandise, goods, documents, investment represented by the documents delivered by the said entrustee is not as represented or is not delivered or cleared through customs. There was just an anticipation on the part of petitioner and AD Mfg. Phils. Inc. with regard to the latter's outstanding unpaid account with the Bureau so that it became necessary to execute a trust receipt agreement in order to misrepresent themselves with respect to the real ownership of the subject shipment. However, we are not swayed by such false representation.

In the case of **Vintola vs. IBAA**, *supra*, the Supreme Court held that the entruster in a trust receipt is not the owner of the goods but merely a holder of a security of title. If in the trust receipt, the entrustor bank is made to appear as owner, it was an artificial expedient, more of legal fiction than fact. x x x. The Supreme Court further stated that "xxx for if it were so, it could dispose of the goods in any manner it wants, which it cannot do, just to give consistency with the purpose of the trust receipt of giving a stronger security for the loan obtained by the importer. To consider the bank as the true owner from the inception of the transaction would be to disregard the loan feature thereof. **(Sia vs. People 121 SCRA 655).**

Assuming arguendo that petitioner is truly the owner of the subject shipment in the real sense of the word, because allegedly it was the one who made advances and arrangements with the foreign bank and that AD Mfg. Phil. Inc. allegedly did not provide any money for the opening of the letter of credit, Section 1508 will still apply because the petitioner duly endorsed the bill of lading to AD Mfg. Phils. Under Section 1203 of the Tariff and Customs Code of the Philippines, it is provided that:

> "All articles imported into the Philippines shall be held to be the property of the person to whom the same are consigned: and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the

consignee thereof. x x x" (Underscoring supplied)

Since the customs lien over the aforesaid imported articles is more superior than any other lien, the power used to compel importer to settle its obligation with the Bureau of Customs on its importation which remains in respondent's custody is proper. Under Section 1204 of the Tariff and Customs Code, the liability of an importer for duties, taxes, fees and other charges attaching on importations constitutes a personal debt due from the importer to the government. It also constitutes a lien upon the articles imported which may be enforced while such articles are in the custody or subject to the control of the government. Clearly, the claim of the Bureau of Customs for unpaid custom duties and taxes enjoys the status of a specially preferred credit under Article 2241(i) of the Civil Code. (**Republic vs. Hon. Peralta, et. al., G.R. No. 56568, May 20, 1987**, cited in Compendium of Tax Law and Jurisprudence by Vitug, 3rd ed. p. 319) In fine, the Bureau of Customs has acted well within its authority in allowing AD Mfg. Phils. Inc. to file the entry being the holder of the duly endorsed bill of lading. It should be noted that had it not been for the "Hold Order" issued, the said shipment could have been released to AD Mfg. Phils. Inc. Such being the case, the Bureau of Customs, may within its authority, proceed against the said shipment of AD Mfg. Phils. Inc. under aforestated Section 1508 of the Tariff and Customs Code. Petitioner can however, resort to other courses of action to enforce its rights against AD Mfg. Phil. Inc. by virtue of their transactions.

It should also be stressed that as a government agency, the Bureau of Customs enjoys the legal presumption of regularity in the performance of its assigned functions. It is the rule that in reviewing administrative decisions, the findings of facts made therein must be respected, so long as they are supported by substantial evidence, even if not overwhelming or preponderant and that it is not for the reviewing Court to weigh the conflicting evidence, determine the credibility of the witnesses, or otherwise substitute its judgment for that of the administrative agency on the sufficiency of the evidence, unless there is proof of gross abuse of discretion, fraud or error of law. **(Timbancaya vs. Vicente, et. al. G.R. No. L-1900, December 27, 1963, 9 SCRA 852, citing Ang Tibay vs. CIR, 69 Phil. 635; Lao Tang Bun vs. Fabre, 81 Phil. 682 and Lovina vs. Morena 9 SCRA 557, see also Jamil Barodi vs. Commissioner of Customs, CTA Case No. 5121, May 28, 1996)**

127

In view thereof, this Court supports the respondent's decision to proceed against the subject shipment covered by Entry No. 17357-95, pursuant to Section 1508 of the Tariff and Customs Code of the Philippines, as amended.

WHEREFORE, premises considered, finding the petition unmeritorious and not in accordance with law, the same is hereby **DISMISSED** with cost against petitioner.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge