**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## FIRST DIVISION

***************

**CALTEX PHILIPPINES, INC.,**
Petitioner,

C.T.A. CASE NO. 6358

Members:

- versus -

**ACOSTA,** *Chairman*
**BAUTISTA,** and
**CASANOVA,** *JJ.*

**COMMISSIONER OF THE BUREAU OF CUSTOMS,**
Respondent.

**Promulgated:**

APR 0 5 2005

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***BAUTISTA, L., JJ.:***

# DECISION

Petitioner has filed before Us a Petition for Review assailing the decision dated October 29, 2001, of respondent demanding it to pay deficiency customs duty in the total amount of One Billion One Hundred Eighty Million One Hundred Seventy Thousand Seven Hundred Sixty Nine & 29/100 Pesos (₱1,180,170,769.21) due from its importations of crude oil made on various dates from March 8 to April 7, 1996 with Import Entry Nos. 600-96 up to 606-96 & 818-96. In his decision, respondent ruled that there was an irregularity in the release of said shipments to petitioner because there was abandonment, by operation of law, in favor of the government when it filed the import entries beyond the thirty-day period prescribed under the Tariff and Customs Code of the Philippines.[1]

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[1] Joint Stipulation of Facts and Issues, pp. 1-2; Docket, pp. 147-148.

Prior to the enactment of Republic Act No. 8180,[2] or from March 8 to April 7, 1996, petitioner made various importations of crude oil.

Petitioner observes the following procedures on making importations: Its Supply Trading Analyst places order of crude oil with its supplier. Before the arrival of its importation, petition secures permit to discharge the import good/s from the Collector of Customs in Batangas by furnishing the latter pertinent informations such as the type of crude or petroleum product to be imported, the volume, the vessel carrying it and the estimated time of arrival. When the importation arrives, the cargo is immediately discharged into the tank/s of petitioner found in the latter's refinery in Batangas under the supervision of a Bureau of Customs' representative. After reconciling the volume discharged in its tank, petitioner shall file the required import entry declaration ("IED") and stating, among others, the estimated customs duties for the cargo and the actual volume received within 2 to 10 days after the release of its cargo. It shall also pay ninety percent (90%) of the estimated duties with the authorized bank. Thereafter, upon receipt of the invoice issued by the supplier and the bill of lading, petitioner shall file the corresponding import entry and internal revenue declaration ("IEIRD") with the Bureau of Customs and pay the difference between the final customs duties as computed based on the original invoice and amount it paid based on the total dutiable value as found in the import entry declaration.[3]

Petitioner's five importations were covered by eight bill of ladings, summed up as follows:

| PRODUCT | ARRIVAL DATE | VESSEL |
|---|---|---|
| 66,229,960 ltrs Nan Hai Crude Oil | 3/8/1996 | Ex MT Bona Spray |
| 6,990,712 lrts Reformate | 3/18/1996 | Ex MT Orient Tiger |
| 16,651,177 ltrs. FCCU Feed Stock | 3/21/1996 | Ex MT Probo Boaning |
| 236,317,862 ltrs. | | Ex MT |

2 Otherwise known as "Downstream Oil Industry Deregulation Act of 1996" which took effect on April 16, 1996.

3 TSN, November 25, 2002 and January 15, 2003.

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|---|---|---|
| Oman/Dubai Crude Oil | 3/26/1996 | Violet |
| 51,878,114 lrts Arab Crude Oil | 4/10/1996 | Ex MT Crown Jewel |

The above enumerated shipments were unloaded from the carrying vessels to its oil tanks within a period of three days from the date of their arrival. Subsequently, the import entry declarations ("IEDs") were filed and 90% of the total customs duties were paid.

As all import entries and internal revenue declarations ("IEIRDs") on subject shipments of petitioner were filed only on two dates, May 10, 1996 and June 21, 1996, the importations were appraised at a duty rate of three percent (3%) as provided in R.A. No. 8180 and petitioner paid import duties only on two shipments.

The import entry declarations, import entry and internal revenue declarations and the customs duties paid by the petitioner are presented hereunder:

| IED No. | Date Filed | Total Dutiable Value Paid | IEIRD No. | Date Filed | Total Dutiable Value Paid | BOC O.R. No |
|---|---|---|---|---|---|---|
| 15361656 | 4/10/1996 | Import Duty P2,496,305.00<br>Special Duty 856,438.00<br>**Total P3,352,743.00** | **818-96** | 6/21/1996 | Import Duty P 4,066,063.00<br>Special Duty 8,708,709.00<br>**Total P 4,642,646.00** | 36757761 |
| 15361577 | 3/12/1996 | Import Duty P13,252,306.00<br>Special Duty 18,994,537.00<br>**Total P32,246,843.00** | **606-96** | 5/10/1996 | Import Duty P 6,253,833.00<br>Special Duty 8,817,797.00<br>**Total P 2,563,964.00** | 36757305 |
| 15361595 | 3/26/1996 | Import Duty P 3,577,072.00<br>Special Duty 14,216,573.00<br>**Total P 17,793,645.00** | **605-96** | 5/10/1996 | | |
| 15361604 | 3/26/1996 | Import Duty P 1,735,044.00<br>Special Duty 6,264,288.00<br>**Total P 7,999,332.00** | **604-96** | 5/10/1996 | | |
| 15361622 | 3/28/1996 | Import Duty P 29,530,362.00<br>Special Duty 135,251,799.00<br>**Total P164,782,161.00** | **603-96** | 5/10/1996 | | |
| 15361622 | 3/28/1996 | (Computed with IEIRD No. 603-96) | **601-96** | 5/10/1996 | | |
| 15361631 | 3/28/1996 | Import Duty P 14,895,395.00<br>Special Duty 68,222,292.00 | **600-96** | 5/10/1996 | | |

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|---|---|---|---|---|---|---|
| | | **Total P 83,117,687.00** | | | | |
| 15361631 | 3/28/1996 | (Computed with IEIRD No. 600-96) | **602-96** | 5/10/1996 | | |

Subsequently, then Secretary Edgardo Espiritu of the Department of Finance received a letter (with annexes)[4] dated June 10, 1999 from a certain Alfonso A. Orioste denouncing "deliberate concealment, manipulation and scheme employed by Caltex and Pilipinas Shell in the importation of crude oil" thereby resulting to huge lost of revenues. The said letter was endorsed to the Bureau of Customs for investigation on July 19, 1999.

Thus, on January 28, 2000, petitioner received a Subpoena Duces Tecum/Ad Testificandum from Chief Conrado M. Unlayao of the Investigation and Prosecution Division, Customs Intelligence and Investigation Service of the Bureau of Customs ("IPD-CIIS") to bring Entry Nos. 600-96, 601-96, 602-96, 603-96, 604-96, 605-96, 606-96 and 818-96, Bureau of Customs Official Receipts and other pertinent documents as an investigation was being conducted on the subject shipments.[5] Apparently, the Legal Division of the Bureau of Customs was also carrying out an investigation as Atty. Roberto Madrid went to petitioner's Batangas Refinery and requested for information and documents on the same shipments. Consequently, petitioner sought for a team to exclusively handle the investigation.[6]

Meanwhile, or on August 1, 2000, petitioner received from the District Collector of the Port of Batangas a Demand Letter requiring the immediate settlement of the amount of SEVENTY THREE MILLION FIVE HUNDRED THIRTY FIVE THOUSAND AND EIGHT HUNDRED THIRTY PESOS (P73,535,830.00) representing the total dutiable value due from the importations made. In response, petitioner sent a letter informing the District Collector of the Port of Batangas of the pending request for the creation of a unified team to exclusively

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4 BIR Records, pp. 14-16

5 Annex "B" of the Petition for Review, p. 13; BIR Records, pp. 51-52.

6 Annex "C" of the Petition for Review, pp. 14-15; Exhibit "NNN" for the petitioner, Docket, pp. 326-327.

handle the investigation. Further, petitioner expressed its objection to the demand for payment of the dutiable value using 10% duty rate and raised the defense of prescription against the assessment pursuant to Section 1603 of the Tariff and Customs Code. Also, petitioner submitted that the 3% tariff rate should be applied in computing the customs duties. Thus, it requested that the assessment for deficiency customs duties be cancelled and the Notice of Demand be withdrawn.[7]

On October 12, 2000, respondent appointed IPD-CIIS to handle the investigation of the five shipments to the exclusion of the Legal Office of the BOC and the Collector of Customs of Port of Batangas.[8]

In a Memorandum dated February 2, 2001, Special Investigator II Domingo B. Almeda and Special Investigator III Nemesio C. Magno, Jr. of the Customs Intelligence & Investigation Service, Investigation & Prosecution Division of the Bureau of Customs ("CIIS-IPD") made the following evaluation and conclusion based on their findings:

> "There is no dispute that the 8 Import Entries covering the 5 shipments of Caltex was filed by the importer and accepted by the Customs officials of the Port of Batangas far beyond the 30 days non-extendible period mandated by Law.
>
> "Caltex declared the shipments at 3% rate of duties pursuant to R.A. 8180 which took effect on 16 April 1996. The officials of the Port of Batangas accepted the declared rate and collected the duties due therefrom.
>
> "Prior to the effectivity of R.A. 8180 the rate of duty for oil shipment was 10%.
>
> "xxx xxx xxx
>
> "In all the above instances, the filing and acceptance of the questioned 8 Import Entries of Caltex and 1 Import Entry of Shell was authorized by then District Collector Luciano Morabe. xxx
>
> "While it is equally important to discuss the merit of the 7% deficiency in duty (that is, 10% less 3%) due on the questioned shipments of Caltex and Shell, yet the matter is deemed peripheral to the major issues in this case, namely:

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7 Docket, pp. 328-329.

8 Annex "E" of the Petition for Review, p. 20; Joint Stipulation of Facts and Issues, par. 3, p. 2, Docket, p. 148.

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"FIRST, WHETHER THE ACTION OF THE DISTRICT COLLECTOR IN ALLOWING THE FILING AND ACCEPTANCE OF THE IMPORT ENTRIES FOR THE SHIPMENTS WAS SANCTIONED BY LAW; AND

"SECOND, WHETHER THE IMPORT ENTRIES AND SETTLEMENTS OF DUTIES HAVE ALREADY BECOME FINAL AND CONCLUSIVE UPON THE BOC AND 2 OIL FIRMS.

"On the FIRST ISSUE, the provision of Section 1301 of the Tariff and Customs should be the focal point. Xxx

"xxx xxx xxx

"The law is clear and explicit, leaving no room for further interpretation. It gives only 30 days for the importer or his authorized representative to file the entry. Nowhere in this Section can be found, even by implication, that the District Collector is allowed to exercise his discretion to accept the import entry filed by the importer even beyond the 30 days period prescribed by law.

"Even assuming that the District Collector acted on the basis of the guidelines being enforced in the Port of Manila which allows the acceptance of import entry on specific importations mentioned therein beyond the 30 days period from the arrival of the shipment, still his decision to accept and approve the filing of the 8 Import Entries for the 5 shipments of Caltex and 1 Import Entry for the shipment of Shell is without legal ground based on the records and the circumstances of the case.

"xxx xxx xxx

"Moreover, the importer who failed to file the import entry within the time frame shall be deemed to have renounced all his interests and the property rights therein and the imported article shall be considered abandoned in favor of the government.

"The Code has specific provision on the matter of abandonment. In Section 1801, it provides:

"xxx xxx xxx

"This Section of the Code re-iterates the 30 days non-extendible period provided for in Section 1301 of the TCCP for the importer to file the entry for his shipment. It underscores the effect after the allotted time has prescribed, that is, the transfer of ownership of the abandoned imported articles from the consignee/importer to the government to be disposed of according to law.

"The Law, so far, has not been amended, revised or modified.

"Any action to circumvent the mandate of this Section by allowing the importer to file the entry for his shipments beyond 30 days period is tantamount to giving undue benefits to a party to the prejudice of the

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government punishable under RA 3019, the Anti-Graft and Corrupt Practices Act, xxx

"xxx xxx xxx

"Their concerted actions, namely: the filing of the import entries beyond the prescribed period by the importers; the acceptance of the entry with the declared 3% rate of duty and the collection of taxes and duty based on the declared rate are clear indication of the grand design to defraud the government of its revenue.

"xxx xxx xxx

"On the SECOND ISSUE, whether the entry and duty settlements has already prescribed, the same Code says NO. xxx

"xxx xxx xxx

"The rule is the entry and settlements of duty will be final and conclusive upon all parties after the expiration of one year from the date of the final payments of duties.

"The exception is when there is fraud or protest.

"It is worth to mention at this point that the investigation has established conspiracy to commit fraud against the government, between the former District Collector of the Port of Batangas and Messrs. Casabal and Cabrera of Caltex and Mr. Marasigan of Shell.

"The records show that Caltex and Shell bided their time to file their import entries after the 30 days period has prescribed at 3% rate of duty. The District Collector despite being informed by his subordinates about the lapse of the prescribed period of 30 days allowed the acceptance of the entry and the collection of duty based on the declared rate despite the fact that the Law cited earlier does not grant him such authority.

"Obviously, the District Collector, in conspiracy with the above-named officials of Caltex and Shell acted without authority or abused his authority by giving undue benefits to the importers by allowing the processing, payment and subsequent release of the shipments to the damage and prejudice of the government who, under the law is already the owner of the shipments valued at Php 2,176,155,929.00 which was allowed to be withdrawn by the importers after paying meager amounts of duties and taxes.

"Since fraud is present, prescription, does not apply in this case.

"Based on the foregoing, the government should demand from Caltex and Shell for payment of the value of their respective importation which were considered abandoned by operation of law minus the duties and taxes paid by the companies based on the 3% rate of duty and to pursue criminal action against the District Collector and the officers of Caltex and Shell."[9]

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9 BIR Records, pp. 6-10.

The committee, created to investigate the petitioner's importations of crude oil, adopted *in toto* the said memorandum and indorsed the same to respondent.[10]

Thus, Commissioner Titus B. Villanueva sent a letter dated October 29, 2001 informing petitioner on the findings of irregularity in the filing and acceptance of the import entries beyond the period required by customs law and in the subsequent release of the shipments as the same were already considered as abandoned under the said law. Also, petitioner was directed to pay the amount of ₱1,180,170,769.21 representing the total dutiable value of the importations of crude oil made on various dates from March 8 to April 7, 1996.[11]

Hence, petitioner instituted the present court action on November 28, 2001.

During the pendency of the case, petitioner manifested before this Court that Deputy Commissioner Gil A. Valera of the Revenue Collection Monitoring Group of the Bureau of Customs sent another letter, dated December 28, 2001, demanding payment of the deficiency customs duties.[12] As petitioner did not pay the deficiency customs duties, the Bureau of Customs[13] instituted a civil case for collection of a sum of money (docketed as Civil Case No. 02-103239) before the Regional Trial Court, Branch XXV, Manila on April 11, 2002.[14]

Trial proceeded in the present case and petitioner presented its Refinery Accounting Manager, Armando G. Casabal, as its sole witness. On the other hand, respondent submitted the case for decision without presenting additional evidence and merely adopted some of petitioner's exhibits as his evidence.[15]

Both parties agreed to submit two issues for the Court's disposition, to wit:[16]

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10 *Ibid.*, p. 13.

11 Annex "A" of the Petition for Review, p. 12 marked Exhibit **"JJJ"** for the petitioer; Joint Stipulation of Facts and Issues, par. 4, pp. 2-3 (Docket, pp. 148-149); BIR Records, p. 1.

12 Exhibit **"LLL"** for the petitioner; Docket, pp. 24-26.

13 Thru Deputy Commissioner Gil A. Valera of the Revenue Collection Monitoring Group.

14 Docket, pp. 99-103.

15 Docket, pp. 371-372.

16 Joint Stipulation of Facts and Issues, p.4; Docket, p. 150. See also Amended Joint Stipulation of Fact and Issues, p. 5; Docket, p. 162.

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1. Whether petitioner has deemed to have abandoned under Article 1801 (b) of the Tariff and Customs Code its importation of crude oil which arrived on various dates from March 8 to April 7, 1996 under Import Entry Nos. 600-96; 601-96; 602-96; 603-96; 604-96; 605-96; 606-96 and 818-96; and

2. Whether the right of respondent to assess petitioner CPI has prescribed under Section 1603 of the Tariff and Customs Code.

Before proceeding to dispose of the issues raised by the parties, the Court must clarify respondent's submission that the regional trial court has jurisdiction over the present petition. The Court has already settled the issue on jurisdiction in its resolutions of March 5, 2002 and June 5, 2002.[17] We reiterate that respondent's demand letter, dated October 29, 2001, is actually a decision within the purview of Section 7 of R.A. 1125 and that the Court acquired appellate jurisdiction to review the same upon the filing of the petition for review by petitioner on November 28, 2001.

*<u>Abandonment as provided under Article 1801 (b) of the Tariff and Customs Code</u>*

In assailing respondent's findings, petitioner submits that there was no abandonment. In fact, it had immediately claimed the five shipments which were released and delivered to it after the customs duties, taxes and customs guard fees had been paid. Moreover, no abandonment proceedings were instituted against it as there was no due notice given pursuant to Section 1801 of the Tariff and Customs Code.[18]

On the other hand, respondent consistently invokes Sections 1301 and 1801 (b) of the Tariff and Customs Code. Under the law, petitioner is deemed to have abandoned its importations after it failed to file the corresponding import entries within thirty (30) days from the dates the shipments were discharged from the vessels. We quote: "an importer who failed to file the import entry within the time frame provided for by law shall be deemed to have renounced all his interests and property rights therein, and the imported

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17 Docket, pp. 80-82 and 108-109, respectively.

18 Implemented by Customs Administrative Order ("CAO") No. 5-93 and Customs Memorandum Order ("CMO") No. 15-94.

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article shall be considered abandoned in favor of the government." The requirement of due notice to petitioner is not even necessary as: (1) petitioner was fully aware that its shipments had arrived at the port of Batangas since the carrying vessels docked at the latter's private wharf and that it had custody of its oil importations from the time of discharge; (2) petitioner, as a regular importer of oil and other products, is familiar with procedures, rules and regulations on importations; and, (3) the phrase "after due notice" in Section 1801 of the Tariff and Customs Code was intended for "owner, consignee, importer of the shipment who lived in rural areas or distant places far from the port where the shipment was discharged, who are uninitiated with customs procedures and who needs the help/advise of people on how to file an import entry."

We find for the petitioner.

Section 1801 of the Tariff and Customs Code of the Philippines states that:

> SEC. 1801. *Abandonment, Kinds and Effects of.* – An imported article is deemed abandoned under any of the following circumstances:
>
> > a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or
> >
> > b. When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date of posting of the notice to claim such importation.
>
> Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein.

Under the above quoted section, abandonment may be express or implied. It is express when it is made in writing by the owner, importer, consignee or interested party and addressed it to the Collector of Customs. It is implied if it could be inferred from the action or omission of the owner, importer, consignee or interested party.

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In the present case, petitioner has no intention to abandon its shipments as: (1) it applied for special permit to discharge shipments;[19] (2) immediately filed import entry declaration for each of the eight shipments and correspondingly paid tentative import and special duties and other fees;[20] (3) it paid the Bureau of Customs underguarding fees from the time the shipments arrived up to the time of release;[21] (4) it was issued authorities to release imported goods by customs authorities;[22] and, (5) The five shipments were directly unloaded and stored in the oil tanks owned by petitioner in its Batangas refinery as the Bureau of Customs does not have storage or receiving facilities for petroleum products.[23]

We agree with petitioner that the above facts belie respondent's contention of abandonment. Besides, by assessing it of underguarding fees from the arrival of the eight shipments up to the time they were transferred to the tanks in its Batangas refinery, respondent acknowledged that petitioner had claimed and did not abandon the eight shipments.

More importantly, if it can be inferred that there was indeed an implied abandonment in this case, no abandonment proceedings were instituted against petitioner in accordance with the said section, Customs Administrative Order No. 005-93[24] and Customs Memorandum Order No. 015-94. And ironically, respondent even admitted that:

> 1. No abandonment proceedings were ever instituted against petitioner;
> 2. The eight shipments have actually long been released and delivered to petitioner by the Bureau of Customs;
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> xxx xxx xxx
>
> 4. The Bureau of Customs did not take physical possession of the shipments.[25]

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19 Exhibits D, P, BB, II, TT & ZZ.

20 As shown by IEDs marked as Exhibits A, N, AA, FF, RR & XX and by BOC official receipts marked as Exhibits D, T, Z, HH, SS & YY.

21 Exhibits G, G-1 to G-10, H, H-1 to H-6, I, I-1 to I-5, U, U-1 to U-5, V, V-1 to V-6, W, W-1 to W-8, DD, DD-1 to DD-4, EE, EE-1 to EE-3, JJ, JJ-1 to JJ-8, LL, LL-1 to LL-6, MM, MM-1 to MM-2, EEE, EEE-1 to EEE-5; Annexes A & B of the Amended Joint Stipulation of Facts and Issues.

22 Exhibit HHH & III.

23 TSN, November 25, 2002, p. 9.

24 Rules and Regulations on Abandonment.

25 Joint Stipulation of Facts and Issues, pars. 1, 2 &4 and Amended Joint Stipulation of Facts and Issues, pars. 1, 2 &4.

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The language of paragraph b of Section 1801 of the Tariff and Customs Code, as well as the rules, is clear and provides no room for statutory construction.

Petitioner maintains that the right of the Bureau of Customs to assess deficiency duties and taxes has already prescribed as Section 1603 of the Tariff and Customs Code clearly provides that the appraisals, classification or return finally passed upon, approved or modified by the Collector shall not be altered or modified in any manner beyond one year after payment of duties.

We disagree. After a painstaking review of the records of the case and deliberation on the issues raised and parties' respective arguments, the Court finds that respondent is correct when he affirmed the findings of the Customs Intelligence & Investigation Service, Investigation & Prosecution Division of the existence of fraud. And, as prescription does not apply, the government must demand petitioner to pay deficiency customs duties due from the five importations. Section 1603 of the Tariff and Customs Code reads:

> "Sec. 1603. *Finality of Liquidation.* – When articles have been **entered and passed free of duty or final adjustments of duties made,** with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of one (1) year from the date of the final payment of duties, **in the absence of fraud** or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative."[26]

The one-year period as provided in the above section does not apply when there is fraud. Fraud "is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another."[27] Taxpayers devise numerous schemes to evade payment of correct taxes. As the Supreme Court declared: "the fertility of man's invention in devising new schemes of fraud is so great that the courts have declined to

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[26] By virtue of its amendment by R.A. 9135, the period is now three (3) years from date of the final payment of duties in the absence of fraud.

[27] *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr.,* G.R. No. 147188, September 14, 2004.

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define it, reserving to themselves the liberty to deal with it under whatever form it may present itself." Further, "fraudulent scheme is evidenced by a series of related acts committed one after another, silently, quietly and surreptitiously."[28] In the instant case, through a series of acts designed to perpetuate fraud, petitioner almost successfully evaded payment of correct custom duties on its five importations. As fraud is present, respondent may assess and collect from petitioner deficiency customs duties.

Section 204 of the Tariff and Customs Code reads:

> "Section 204. *Effective Date of Rates of Import Duty.* - Imported articles shall be subject to the rate or rates of import duty existing **at the time of entry, or withdrawal from warehouse**, in the Philippines, for consumption.
>
> "xxx xxx xxx"

The clause "at the time of entry, or withdrawal from warehouse" must be understood within the context of Section 205 of the same Code, to wit:

> "Section 205. *Entry, or Withdrawal from Warehouse, for Consumption.* - Imported articles shall be deemed 'entered' in the Philippines for consumption when the specified entry form is properly filed and accepted, together with any related documents required by the provisions of this Code and/or regulations to be filed with such form at the time of entry, at the port or station by the customs official designated to receive such entry papers and any duties, taxes, fees and/or other lawful charges required to be paid with the customs official designated to receive such monies, provided that the article has previously arrived within the limits of the port of entry.
>
> "Imported articles shall be deemed 'withdrawn' from warehouse in the Philippines for consumption when the specified form is properly filed and accepted, together with any related documents required by any provisions of this Code and/or regulations to be filed with such form at the time of withdrawal, by the customs official designated to receive the withdrawal entry and any duties, taxes, fees and/or other lawful charges required to be paid at the time of withdrawal have been deposited with the customs official designated to receive such payment.

The language of the law is clear. **Imported articles shall be subject to the rate of import duty at the time of entry or withdrawal from the customs warehouse.** An import entry declaration ("IED"), as a document filed with the customs, is an entry

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28 *Rivera vs. Litam & Company, Inc.*, 4 SCRA 1072, 1083, April 25, 1962.

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within the meaning of Sections 204 and 205 of the Tariff and Customs Code. No less than the Supreme Court has ruled in *Remigio vs. Sandiganbayan*[29] that: "The term 'entry' in customs law has a triple meaning. It means: (1) the document filed at the customs house; (2) the submission and acceptance of the documents; and, (3) the procedure of passing goods through customs house."

From the foregoing, the dates when petitioner filed its import entry declarations shall be taken into consideration as to what duty rate to apply in assessing the correct customs duty. In other words, on the date when petitioner filed its import entry declarations ("IEDs") and paid ninety percent of the total dutiable value prior to the arrival of shipments, R.A. 8180 was not yet effective and, therefore, the prevailing duty rate was 10% which the Bureau of Customs correctly imposed on petitioner's importations as clearly printed on its import entry declarations. This is consistent with established jurisprudence that declarations in import entries are conclusive upon the party who executed the same.[30]

Besides, Section 2 of Presidential Decree No. 1853 states that: "The amount of the duties due shall be based on the declaration of the applicant (importer) for the letter of credit, subject to the penalties prescribed under Section 2503 of the Tariff and Customs Code of 1978, as amended."[31]

Also, based from the testimony of its witness, petitioner was importing goods under "EPRS" or "Express Processing in the Release of Shipments". As an importer, petitioner was required to submit letter/s of credit and the corresponding import entry declaration/s ("IED") and pay duties, taxes and other charges due on the shipments under CMO No. 045-88, dated June 1, 1988.

The import entry declarations ("IEDs") were the required entry forms to be filed by importers. Upon filing of the import entry declarations, the imported articles must be

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[29] G.R. No. 145422-23, January 18, 2002.

[30] *Caltex (Philippines), Inc. vs. Court of Appeals and Commissioner of Customs*, G.R. No. 104781, July 10, 1998.

[31] Entitled "Requiring Deposits of Duties at the Time of Opening of Letters of Credit Covering Imports and For Other Purposes" and took effect on January 1, 1983.

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considered as entered by virtue of Section 205 of the Tariff and Customs Code. Consequently, the subject importations were subject to the prevailing rate of 10%.

Petitioner, as regular importer, is very well aware that the duty rate as found in the import entry declarations ("IEDs") is controlling over the duty rate as found in the import entry and internal revenue declarations ("ÍEIRDs"). This is apparent when petitioner applied for a special permit to discharge its shipments before the latter's arrival and gave its commitment to pay customs and special duties "based on the initial computations" and to file its final entries "within the prescribed period as provided for".[32]

Nonetheless, given the situation that there were discrepancies on the duties declared in the import entry declarations ("IEDs") and import entry and internal revenue declarations ("IEIRDs"), the Tariff and Customs Code clearly provides that duties shall not be assessed upon amounts less than the entered values. We quote:

> "Section 1408. *Assessment of Duty on Less Than Entered Value.* - **Duty shall not be assessed in any case upon an amount less than the entered value**, unless by direction of the Commissioner in cases which the importer certifies at the time of entry that the entered value is higher than the dutiable value and that the articles are so entered in order to meet increases made by the appraiser in similar cases then pending reappraisement; and the lower assessment shall be allowed only when the importer's contention is sustained, by final decision, and shall appear that such action of the importer was taken in good faith after due diligence and inquiry on his part." (Emphasis supplied.)

What clearly demonstrates petitioner's deliberate intention to evade payment of correct customs duties was its act or omission of not filing any statement of error, and requesting for reappraisal or certification informing the Collector at the Port of Batangas that the entered values as found in the import entry declarations ("IEDs") were higher than the dutiable value declared in its final entries ("IEIRDs"). It did not even present as evidence a final decision of the Commissioner allowing the lower assessment of duties pursuant to the above section.

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32 Exhibits "D", "P", "BB", "II", "TT" and "ZZ".

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Regardless of the date of filing of import entry declarations ("IEDs") and import entry and internal revenue declarations ("IEIRDs"), the subject shipments shall be subject to the prevailing 10% rate of import duty **at the time of petitioner's withdrawal** of its shipment pursuant to Section 204 of Tariff and Customs Code above quoted.

In order to avail of a lower duty rate on its importations, petitioner waited for the effectivity of R.A. 8180 before filing its import entry and internal revenue declarations ("IEIRDs") and gave Us a flimsy excuse that the delay in the filing of the same resulted from its compliance with the Bureau of Customs' requirement to file the final entries with the original bills of lading and invoices which their suppliers would send after the latter were able to compute the average monthly price of the crude oil based on worldwide trading.

As an importer, petitioner knows that it must file its final entries within the non-extendible period of thirty (30) days from dates of discharge of the eight shipments. However, petitioner was able to file the final entries on the shipments beyond the allowable period. To be exact, 63, 53, 50, 45 and 72 days had lapsed before petitioner filed its import entry and internal revenue declarations ("IEIRDs") for the shipments which arrived on March 8, 18, 21 & 26 and April 10, 1996, respectively.

The Court finds petitioner's explanation in its delay to file final entries untruthful and incredulous.[33] The invoices and bills of lading were issued immediately after crude oils were loaded into the shipping vessel. The records show that the bills of lading and corresponding invoices covering the shipments were executed immediately after the crude oil were loaded into the vessel, thus:[34]

| **IEIRD No.** | **Date of Bill of Lading** | **Date of Invoice** |
|---|---|---|
| 606-96 | 03/07/1996 | 03/15/1996 |
| 605-96 | 03/16/1996 | 03/27/1996 |
| 604-96 | 03/14/1996 | 03/31/1996 |
| 602-96 | 03/10/1996 | 03/29/1996 |
| 601-96 | 03/07/1996 | 03/29/1996 |
| 600-96 | 03/10/1996 | 03/29/1996 |

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33 TSN, November 25, 2002, p. 39.
34 Exhibits "Q", "R", and "CC"; Docket, pp. 221-222 and 252. See also BIR Records.

Petitioner, therefore, has no reason to file the said entries beyond the 30-day period. As previously mentioned, it even made an undertaking that it shall file its final entries "within the prescribed period as provided for."

The above observation of the Court is bolstered by the fact that the term of payment ("30 DAYS AFTER B/L DATE [B/L DATE EXCLUSIVE] A2S") was similarly annotated in two invoices.[35] More particularly, payment for the Nan Hai crude oil and Arab crude oil were due on April 5, 1996 and April 17, 1996, respectively. The third invoice marked as Exhibit "Y" for the petitioner was not even for the importation of FCCU feed stock but it was actually an invoice for its importation of "hydrocracker bottoms" covered by a bill of lading dated March 16, 1994 and payment thereon was due on April 15, 1994.

The Court stresses that the filing of import entry and revenue declarations ("IEIRDs") is for the purpose of ascertaining the value of imported articles, collect the correct customs duties and to avoid smuggling of goods into the country. However, the absence of the required documents should not prevent the importer from complying therewith. To elucidate, We quote the Supreme Court's ruling in *E. Vieglemann & Co. vs. Insular Collector of Customs* that:[36]

> "xxx It is a rule well established that, in fixing the duty or value of imported articles, the Collector of Customs is not limited to the value set out in the invoice. The Collector of Customs may use his own knowledge of the values obtained in whatsoever manner he can, and may make independent investigation for the purpose of satisfying himself as to the market value of the article imported in the country where it is manufactured and sold. If the Collector of Customs in his opinion finds that the values set out in the invoice are not true he may reject the invoice values and assess the merchandise according to his own judgment, based upon proof of what is the real market value in the country where manufactured and from which the same is exported. The rule is also well established that the value of the merchandise fixed by the appraiser and affirmed by the Collector of Customs is conclusive, in the absence of an affirmative showing that the appraiser, in assessing the value, proceeded upon a wrong principle and contrary to law. xxx Not only may the Collector of Customs fix the value of merchandise, but the burden is upon the importer to overcome the presumption that such appraisement is legal and just."

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35 Exhibits "Q" and "R".

36 G.R. No. L-11717, October 16, 1917.

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To reiterate, the period of thirty (30) days within which to file its import entry and internal revenue declarations ("IEIRDs") is non-extendible. Petitioner should have filed the same within thirty (30) days after it withdrew the shipments from the Bureau of Customs and executed proper document/s for the Bureau of Customs at the Port of Batangas to determine the correct customs and special duties and other fees due on the importations in order to comply with provisions of the Tariff and Customs Code on examination, classification and appraisal of imported articles, delivery of articles and liquidation of duties.[37] Absent supporting documents should not hinder petitioner from observing the period given as documents such as sales, commercial or consular invoices are not conclusive on the government. Otherwise, the government shall be at the mercy of importers who may avail of schemes and other arrangements to lower and reduce the fact value of the articles covered by such invoices.[38]

The cited case of *Petron Corp. vs. Commissioner of the Bureau of Customs (CTA Case No. 5386, February 17, 1999)* should not be taken out of context. Still, the Court maintains that:

> "xxx [I]t is clear and unambiguous that the rate of import duty to be applied should be that which is existing at the time of entry of the specified entry form, together with the related documents, as required by the Code and regulations of Respondent's Bureau. xxx"

It must be pointed out that in the above cited case, Petron filed import entries, referred therein as "formal consumption entries", for its shipments only once. There were no import entry declarations ("IEDs") and import entry and internal revenue declarations ("IEIRDs") to speak of and compare with. Thus, the applicable rate of import duty was reckoned on the date it filed formal consumption entries for its importations.

In contrast, petitioner in the present case filed two forms of import entry for each shipment - import entry declaration ("IEDs") and import entry and internal revenue

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37 Sections 1401-1708.
38 *Caltex (Philippines), Inc. vs. Court of Appeals and Commissioner of Customs*, G.R. No. 104781, July 10, 1998,

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declaration ("IEIRDs"). And, as import entry declaration was required to be filed by petitioner, the Court holds that the five importations were deemed entered at the time when it filed import entry declarations and, thus, subject to the rate of import duty of 10%.

The belated filing of import entry and internal revenue declarations ("IEIRDs") without valid reasons and declaring therein a lower duty rate of 3%, the non disclosure of discrepancies on the duties declared in the import entry declarations ("IEDs") and import entry and internal revenue declarations ("IEIRDs") covering the subject shipments and, lastly, payment of lower customs duties despite the absence of final decision of the respondent allowing the lower assessment of customs duties **only on two shipments** covered by Import Entry and Internal Revenue Declarations ("IEIRDs") Nos. 818-96 and 606-96 are clear indicia of petitioner's intention to defraud the government of revenues.

In a previously cited case of *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr., etc.*,[39] the Supreme Court found Cibeles Insurance Corporation liable for deficiency income tax and found a fraudulent scheme perpetuated by the company resulting to evasion of a higher corporate income tax rate. It ruled:

> "*Tax avoidance* and *tax evasion* are the two most common ways used by taxpayers in escaping from taxation. Tax avoidance is the tax saving device within the means sanctioned by law. This method should be used by the taxpayer in good faith and at arms length. **Tax evasion, on the other hand, is a scheme used outside of those lawful means and when availed of, it usually subjects the taxpayer to further or additional civil or criminal liabilities.**
>
> **"Tax evasion connotes the integration of three factors: (1) the end to be achieved, *i.e.*, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being 'evil,' in 'bad faith,' 'willfull,' or deliberate and not accidental'; and (3) a course of action or failure of action which is unlawful."** (Emphasis supplied.)

The above enumerated factors are, beyond doubt, present in this case.

In sum, as petitioner intentionally evaded the payment of correct customs duties by declaring a lower customs duty of 3% in its import entry and internal revenue declarations

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39 G.R. No. 147188, September 14, 2004.

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instead of the required 10% rate, thereby, effectively depriving the government of revenue, it is therefore liable to pay the deficiency customs duty of 7%, plus surcharge of 25% based on Section 2501 of the Tariff and Customs Code.

Further, as petitioner is found to have committed fraud and intentionally did not pay the correct customs duties, the deficiency customs duty computed hereunder shall bear interest at six percent (6%) *per annum* which shall accrue on the date of promulgation of this Court's Decision until its finality. In addition thereto, the sum so awarded shall likewise bear interest at the rate of 12 percent (12%) *per annum* from the time this judgment becomes final and executory until full satisfaction thereof.[40] As declared in ***Eastern Shipping Lines, Inc. vs. Court of Appeals and Mercantile Insurance Company, Inc.:***[41]

> "I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on 'Damages' of the Civil Code govern in determining the measure of recoverable damages.
>
> x x x x x x x x x
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the **rate of 6% per annum**. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Article 1169, Civil Code) but when such certainty cannot be so reasonable established at the time the demand is made, **the interest shall begin to run only from the date of the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount of finally adjudged.**
>
> **3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, xxx, shall be 12% per annum from such finality until its satisfaction,** this interim period being deemed to be by then an equivalent to a forbearance of credit."

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[40] Sections 1156, 1169, 1170, 2195, 2209-2213, New Civil Code; Eastern Shipping Lines, Inc. vs. Hon. Court of Appeals, G.R. No. 97412, July 12, 1994; Desamparados M. Soliva vs. The Intestate Estate of Marcelo M. Villalba and Valenta Balicua Villalba, G.R. No. 154017, December 8, 2003.

[41] G.R. No. 97412, July 12, 1994. See also *Desamparados M. Soliva, Substituted by Sole Heir Perlita Soliva Galdo vs. The Intestate Estate of Marcelo M. Villalba and Valenta Balicua Villalba*, G.R. No. 154017, December 8, 2003.

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Based on the dutiable value as found in the import entry and internal revenue declarations ("IEIRDs") and as stipulated by the parties, the deficiency customs duties on the subject importations are computed as follows:

| BOC Entry No. | | Dutiable Value per IEIRD |
|---|---|---|
| 600-96 | P | 98,594,449.84 |
| 601-96 | | 240,014,504.30 |
| 602-96 | | 147,891,427.75 |
| 603-96 | | 239,496,602.83 |
| 604-96 | | 29,249,571.67 |
| 605-96 | | 61,983,893.22 |
| 606-96 | | 233,282,431.20 |
| 818-96 | | 159,767,908.40 |
| **TOTAL** | P | 1,210,280,789.21 |

| | |
|---|---|
| Dutiable Value per IEIRD | P1,210,280,789.21 |
| Multiply by deficiency duty rate | 7% |
| Basic Deficiency Import Duties | 84,719,655.24 |
| Add 25% surcharge due to fraud | 21,179,913.81 |
| **Total Deficiency Customs Duties** | **₱ 105,899,569.05** |

**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** and petitioner is **ORDERED TO PAY** the respondent deficiency customs duties in the amount of **ONE HUNDRED FIVE MILLION EIGHT HUNDRED NINETY NINE THOUSAND FIVE HUNDRED SIXTY NINE PESOS and FIVE CENTAVOS (₱105,899,569.05)**, plus **six percent (6%) legal interest *per annum*** accruing from the date of promulgation of this Decision until its finality. Upon finality of this Decision, the sum so awarded shall bear an interest at the rate of **twelve percent (12%) *per annum* until its full satisfaction.**

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

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WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**(With Dissenting Opinion)**
**CAESAR A. CASANOVA**
Associate Justice

## CERTIFICATION

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

**ERNESTO D. ACOSTA**
Chairman, First Division
Presiding Justice

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