REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNION REFINERY CORPORATION,
Petitioner,

C.T.A. EB NO. 149
(C.T.A. Case No. 5917)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
JAN 15 2007 [signature]

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D E C I S I O N

BAUTISTA, J.:

Assailed via a Petition for Review are (1) the Resolution of the Second Division of the Court ("Court in Division"), dated December 6, 2005 denying petitioner's Motion for Reconsideration, and (2) the Decision of the Court in Division promulgated on September 7, 2005, finding petitioner liable for the payment of P138,060,194.42, representing unpaid deficiency value-added taxes (VAT), special duties and excise taxes on the oil importations during the taxable years 1991 to 1995, including the shipment of 4,693.937 Metric Tons base oil.

The facts as culled from the records of the case are briefly narrated as follows:

On March 4, 1998, the District Collector of the Port of Manila sent petitioner a Demand Letter assessing it deficiency taxes in the aggregate amount of P295,583,329.10 representing excise taxes, ad valorem and VAT pursuant to Section 145 of the Internal Revenue Code and Executive Order No. 478, on petitioner's twenty three (23) shipments consisting of oil and other petroleum products which arrived at the Port of Lucanin, Mariveles, Bataan sometime between January 6, 1991 and November 7, 1995, all consigned to Union Refinery Corporation (herein petitioner) and Union Global Trading *(page 24, CTA Records)*.

On April 16, 1998, another Demand Letter was sent to petitioner by the District Collector of the Port of Manila, assessing it for non-payment of VAT, special duties and excise taxes on its importations in the Port of Mariveles from 1991 to 1995 in the reduced amount of P289,287,486.60 *(page 25, CTA Records)*. The reduction in the amount was made after the meeting on April 1, 1998 at the Office of the Commissioner of Customs which was attended by officials of the Bureau of Customs (BOC) and petitioner's legal counsels.

On November 25, 1998, petitioner received another Demand Letter, this time from then BOC Commissioner Pedro C. Mendoza, directing petitioner to pay the amount of P119,223,541.71, representing special duty, VAT and excise tax at the time of release from customs on petitioner's seventeen (17) oil shipments from 1991 to 1995, based on the investigation conducted by the Customs Intelligence and Investigation Service (CIIS) *(page 36, CTA Records).*

In his letter to petitioner dated December 21, 1998, Commissioner Mendoza referred to the letter of petitioner dated December 11, 1998 informing his office that petitioner is committed to settle its tax deficiency in the amount of P119,223,541.71 provided that a total amount of P97,005,741.88 be excluded from the amount demanded. Commissioner Mendoza stated therein that only P10,006,961.66, the amount of excise tax erroneously assessed under import entry No. 004-93 and P10,000,000.00 representing petitioner's partial payments can be deducted from the amount demanded. Hence, he directed petitioner to pay the reduced amount of P99,216,580.10. Commissioner Mendoza also acknowledged the P5,000,000.00 paid by petitioner during the past administration, pending final assessment of petitioner's tax accountability *(page 37-38, CTA Records).*

In a letter to then BOC Commissioner Nelson A. Tan dated May 24, 1999, petitioner submitted its proposal to settle its tax obligations in the amount of P94,216,580.00 *(page 39, CTA Records).* It appears that petitioner arrived at this amount by deducting the P5,000,000.00 it paid during the past administration from the assessment of P99,216,580.10.

On July 2, 1999, Commissioner Tan formally demanded from petitioner and Oilink International Corporation the amount of P138,060,200.49 which was based on the review of documents and re-computation conducted by the CIIS with the assistance of Customs Appraisers *(page 87, CTA Records)*.

On July 8, 1999, petitioner sent a letter to Commissioner Tan protesting the re-evaluated preliminary assessment of P138,060,200.49 and requested for basis and specifications *(page 40-41, CTA Records)*.

On July 12, 1999, Commissioner Tan sent another letter to herein petitioner attaching the detailed computation of the re-evaluated preliminary assessment of P138,060,200.49 and reminding petitioner that the ten (10) day period given is set to expire the following day *(page 42, CTA Records)*.

Thereafter, petitioner sought relief before this Court when it filed its Petition for Review on July 30, 1999.

In his Answer, respondent alleged the following special and affirmative defenses:

1) The Honorable Court has no jurisdiction over the subject matter of the claim;
2) Petitioner failed to exhaust administrative remedy; and
3) The Bureau of Customs has jurisdiction over the present collection dispute.

After trial on the merits, the Court in Division rendered the assailed Decision dated September 7, 2005, the dispositive portion of which is quoted below:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED**. Accordingly, petitioner is ordered to pay the respondent the amount of ONE HUNDRED THIRTY EIGHT MILLION SIXTY THOUSAND ONE HUNDRED NINETY FOUR

PESOS AND 42/100 (P138,060,194.42), representing unpaid deficiency value-added taxes, special duties and excise taxes on the oil importations during the taxable years 1991 to 1995, including the shipment of 4,693.937 MT base oil.

In addition, as regards the deficiency value-added taxes and excise taxes, petitioner is **ORDERED** to pay a 20% delinquency interest per annum computed from July 12, 1999 until the amount is fully paid, pursuant to *Section 249(c) of the NIRC of 1993*, as amended. As regards the deficiency special duties, the same shall bear six percent (6%) legal interest per annum from July 12, 1999, date of demand, up to the finality of this Decision. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum from the time the judgment in this case becomes final and executory and until such amount is fully paid.

SO ORDERED."

Petitioner then moved for reconsideration of the said Decision which was denied by the Court in Division in a Resolution dated December 5, 2005.

Hence, this recourse, with petitioner raising the following issues:

I. Whether or not the Second Division of the Honorable Court of Tax Appeals erred in its 05 December 2005 Resolution and 07 September 2005 Decision in finding that petitioner has categorically admitted its tax obligation.

II. Whether or not the Second Division of the Honorable Court of Tax Appeals erred in its finding that there is nothing on record to rebut the respondent's allegations whereas petitioner submitted several public documents showing full and complete payments of taxes and duties.

III. Whether or not the Second Division of the Honorable Court of Tax Appeals erred in ruling that the importations from year 1991 to 1995 has not been terminated considering that petitioner has sufficiently adduced proof of full payment of taxes and duties thereof as early as 1996.

IV. Whether or not the Second Division of the Honorable Court of Tax Appeals erred in sustaining the correctness and validity of the respondent's assessment of deficiency considering that the respondent failed to adduce the basis of the difference thereof.

We shall tackle the foregoing issues *in seriatim.*

Petitioner admitted its tax obligations

Anent the first issue, petitioner argues that contrary to the Court in Division's findings that it "categorically admitted" its tax obligations, petitioner has consistently claimed that its offer to pay was made only to buy peace. According to petitioner, "[r]ecords indicate that apart from the allegation made in its Petition for Review, petitioner has, from as early as its Protest dated July 2, 1999 to date, expressly declared that its previous offers to pay were never admissions on its part but were mere offers or attempts, at best to buy peace." Petitioner alleges that these open declarations were never controverted by respondent whether in its pleadings nor in the testimonies of its witnesses. In fact, petitioner claims that respondent judicially admitted such open declarations in its Answer to the Petition for Review. Since it was a mere offer to pay, petitioner avers that it was error for the Court in Division to consider such offer as an indication of petitioner's liability. As basis, petitioner cites Section 27, Rule 130 of the Rules of Court which states that "[i]n civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror...." Furthermore, petitioner asserts that its payment of Fifteen Million Pesos (P15,000,000.00) should not be considered as an admission of liability as it evidenced only the goodwill of petitioner to consistently maintain a harmonious relationship with the respondent and should be seen as a form of buying peace.

On the other hand, respondent in its Comment, counters that petitioner categorically admitted its tax obligations as stated in petitioner's letter to respondent dated May 24, 1999 *(page 39, CTA Records)*, to wit:

> "May 24, 1999
>
> **Honorable Nelson A. Tan**
> Commissioner
> Bureau of Customs
> Port Area, Manila
>
> Sir:
>
> <u>We would like to thank you for giving us the opportunity to settle our tax obligations. We assure you that our company is committed to settle its tax deficiency with the government. However, because of the present economic condition, our financial position does not warrant a full settlement of the amount of P94,216,580.00 at the moment.</u>
>
> We, however, as agreed upon, respectfully submit our proposal to settle our tax obligations, as follows:
>
> a) URC to advance from Oilink International Corporation's (OIC) receivables from NAPOCOR the amount of P28,264,974.00 to pay the Bureau of Customs (BOC) 30% of its total obligation.
>
> b) The balance to be paid in monthly installments for a period of three (3) years with corresponding company post dated checks as security and other available tax credits in the future.
>
> We hope that this proposal would be acceptable to the Bureau as the company is really in a financial crisis at present.
>
> Thank you very much.
>
> Very truly yours,
>
> (Sgd.) MANUEL CO
> President"
>
> (Underscoring supplied)

Respondent also emphasized that petitioner paid the respondent Fifteen Million Pesos (P15,000,000.00) pursuant to respondent's tax and duty deficiency assessment against it. As such, respondent asserts that the act of payment should be considered by the Court *En Banc* as an admission by petitioner against its interest and thus, admissible in evidence against it under Section 26, Rule 130 of the Rules of Civil Procedure.

Petitioner's arguments are untenable. We rule that the Court in Division correctly held that there was an admission by petitioner of its tax liability.

The rule in civil cases is that an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror. The rule however, admits of exceptions. According to the Supreme Court, where the amount named in the offer to accept a certain sum in settlement appears to have been arrived at as a fair estimate of value, it is relevant. Hence, the rule of exclusion of compromise negotiations does not apply when there is no denial, express or implied, of liability and the only question discussed relates to the amount to be paid.[1]

At the outset, We must distinguish between petitioner's payment of Fifteen Million Pesos (P15,000,000.00) and its proposal to pay the assessment of P94,216,580.00 in installments contained in its May 24, 1999 letter to respondent. We agree with petitioner that its P15,000,000 payment should not be considered as an admission of liability as it evidenced only its goodwill to consistently maintain a harmonious relationship with the respondent and should be seen as a form of buying peace. However, as regards the assessment of P94,216,580.00, it is clear from the letter of petitioner dated May 24, 1999 that it made no express or implied denial of its liability. In fact, petitioner was willing to

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[1] Republic of the Philippines v. The Honorable Court of Appeals and Republic Real Estate Corporation, G.R. Nos. 103882 and 105276, November 25, 1998.

settle the full amount demanded by respondent at that time. Due to financial constraints however, petitioner proposed to pay the said amount in installments. Hence, since the only question discussed relates to the amount to be paid and the manner of payment, the rule of exclusion of compromise negotiations does not apply. Besides, if petitioner intended only to buy peace, it should have stated so in the subject letter as it had done in its previous letters to respondent, i.e. *letter signed by petitioner's counsel, addressed to then BOC Commissioner Guillermo Parayno offering to pay Five Million Pesos (P5,000,000.00) "as a deposit to be charged against or to be used in the event that the assessment figures currently under review are established. This deposit is not an indication nor admission of guilt on my client to evade payment of taxes and duties. This act is voluntary on their part in order to prove their sincere desire to correct whatever procedural lapses had been incurred in the past....*"[2]

There is nothing in the records to rebut the findings of the respondent

As regards the second issue, petitioner contends that it was able to present proof of full payment of taxes and duties, such as but not limited to:

1) The December 21, 1998 letter of respondent wherein it admitted that petitioner paid P15,000,000; P18,008,690.50 as erroneous payment; P35,662,371.40 for shipments of aviation fuel to Philippine Airlines and P10,006,961 as erroneous assessment;

2) P36,432,230.89 representing petitioner's payments made directly to the Bureau of Internal Revenue (BIR);

3) P35,894,838.95 payments made directly to the BIR as shown by the various respondent's official receipts;

[2] CTA Records, page 35.

4) Petitioner's various Authority to Accept Payment.

Petitioner also avers that respondent's Memorandum dated December 5, 1996[3] wherein it found shipments of petitioner "from 1991 to December 1995 all in order. xxx other supporting documents showing that duties, taxes and other charges have been properly levied and paid to the Bureau xxx not irregular xxx and therefore may now be dismissed for lack of material evidence and merit" be given due and full credence.

According to petitioner, respondent received all of the petitioner's original duplicate copies of consumption entries, together with the supporting documents such as Certificate of Compliance, SGS surveyors, Report, Official Receipts, Import Entry Declaration involving its shipment from 1991 to 1995 as shown by respondent's Acknowledgment Receipt dated September 27, 1996.[4]

Assuming arguendo that there were missing receipts and documents, petitioner claims that it is factually and legally excused if it cannot produce the same. Petitioner's documents were destroyed as certified by the Bureau of Customs.[5] Pursuant to Section 3514 of the Tariff and Customs Code of the Philippines as amended ("TCCP"), petitioner argues that it is only expected to safekeep said documents and receipts of payment within three (3) years from the date of importation. Hence, considering that the importations being questioned by respondent are those that were made from 1991 to 1995, and the earliest

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[3] CTA Records, page 336.
[4] CTA Records, page 335.
[5] CTA Records, page 334.

demand transpired only sometime in 1998, petitioner believes that it is legally excused based on the abovementioned provision.

On the other hand, respondent in its Comment, argues that the Supreme Court has held that invoking the rule on the requisite period of keeping tax documents cannot be accepted in the absence of the supporting receipts to rebut the tax deficiency assessment.[6] Hence, the presentation of the requisite receipts as proof against the subject tax deficiency is part and parcel of the taxpayer's burden in order to disprove the finding of tax deficiency.

We agree with respondent's contentions.

As correctly pointed out by the Court in Division:

> "In the case at bench, the assessment against the petitioner was based on the findings of the respondent after a report on the alleged oil smuggling activities was received by the office. As a result of the investigation, it was found that petitioner still has unpaid tax obligations. Other than petitioner's self-serving denials, there is nothing in the records to rebut the findings of the respondent. It bears emphasis that **petitioner miserably and significantly failed to refute the findings of the respondent, and in fact, instead of showing proof of payment of the questioned duties and taxes, what petitioner did was to question the validity of the assessment. If indeed, it had settled all its tax obligations for the oil importations it made during the years 1991 to 1995, it should have just presented the necessary receipts and/or documents showing payment thereof.** Petitioner's argument that the documents were already a decade old, and thus, impossible to present is flawed and without factual and legal basis. The first demand letter received by petitioner was in 1998 or three years from the year covered under investigation. It cannot therefore be said that the documents were decade-old. **The proofs required could have readily been presented, if indeed existing and available."** (Emphasis supplied)

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[6] Tan Guan v. Court of Tax Appeals, G.R. No. L-23676, April 27, 1967.

The above findings of facts made by the Court in Division must be accorded deference. In the absence of the Court's abuse or improvident exercise of authority, the facts as determined is entitled to respect.[7] Only errors of law and not rulings on the weight of evidence are reviewable.[8]

The importation was not yet terminated hence, prescription has not set in

With regard to the third issue, petitioner alleges that the Court in Division erred when it justified the assessment and collection against petitioner on the premise that "importation ends only upon full payment of duties and taxes." Petitioner claims that it has fully paid the taxes and duties for the importation covering the period of 1991 to 1995 as evidenced by the documents it presented *i.e.* December 5, 1996 Memorandum of respondent and voluminous Authority to Accept Payments of the BIR. Since the importation for the years 1991 to 1995 was terminated, the 1998 assessment is void as the prescriptive period set forth under Section 1603 of the TCCP of one (1) year has lapsed.

Respondent, in its Comment, submits that the authority and power of the Bureau of Customs to assess and collect the correct duties and taxes due against petitioner cannot be barred by prescription pursuant to Section 1108 of the New Civil Code of the Philippines. Respondent likewise cannot be held estopped from assessing and collecting the correct duties and taxes due on all imported articles as held by the Supreme Court in the case of ***Commissioner of***

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[7] Nasiad v. Court of Tax Appeals, 61 SCRA 238 (1974).
[8] Balboa v. Domingo, 21 SCRA 444 (1967); Chu Hoi Horn vs. Court of Tax Appeals, 25 SCRA 809 (1968); Dy Peh v. Collector of Internal Revenue, 28 SCRA 216 (1969).

Internal Revenue v. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals.[9]

Corollarily, respondent contends that "considering that petitioner failed to pay the correct taxes and duties on its oil shipments, the importation of the same should not be considered as terminated for the purpose of precluding the Bureau of Customs from assessing and collecting the correct duties and taxes against herein petitioner."

Respondent further avers that *assuming arguendo* that prescription lies against the government, as amended, the petitioner's fraudulent scheme to evade the payment of the correct duties and taxes on its oil shipments as clearly established by the thorough and comprehensive investigation by the Investigation and Prosecution Division (IPD), CIIS of the BOC should preclude prescription from setting in. According to respondent, petitioner's oil shipments were released upon a condition of submission of proofs of payment of the tax deficiencies with the BIR. Considering that petitioner did not fully pay the said due taxes as agreed upon, the same should operate to consider the liquidation as merely tentative.

Finally, respondent asserts that whether or not prescription lies against the respondent is a conclusion of fact and law, which even if not specifically denied, is not deemed admitted in accordance with the decision of the Supreme Court in the case of ***Worcester v. Lorenzana.***[10] In fact, respondent specifically pointed out in his Answer as one of its Special and Affirmative Defenses against the

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[9] 234 SCRA 348.
[10] G.R. No. L-9435, July 31, 1958.

issue of prescription, that "there is no truth that in the case at bar, importation had already terminated. The very language of Section 1202, TCCP, cited by petitioner is explicit. The importation ends when payment of the duties, taxes and other charges due upon the articles is made. In the present controversy, it is very clear that there are deficiencies in the payment of the lawful revenues. Indeed, what was actually paid is only a portion of what is legally due and demandable."

Petitioner's contentions are unmeritorious.

Section 1202 of the TCCP provides as follows:

> "Section 1202. When importation begins and deemed terminated. — Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs."

The Supreme Court, in interpreting the aforequoted Section, said that "Importation is not terminated until the duties due on the merchandise have been paid and the legal permit for withdrawal has been issued."[11]

More importantly, the Supreme Court has held that payment of an amount for customs duties, taxes and other charges, does not necessarily terminate the importation and make the release of the imported goods from the customs zone regular. Importation is deemed terminated only upon full payment of the duties, taxes and other charges upon the articles, or secured to be paid, at the port of entry, and the legal permit for withdrawal shall have been granted. Thus, if

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[11]Llamado v. Commissioner of Customs, G.R. No. L-28809, May 16, 1983, 122 SCRA 118.

customs duties, taxes, and other charges on the articles have not been fully paid and the same were released, the release thereof would be irregular, and the goods would be subject to seizure under Section 2530(m) of the TCCP.[12]

In the instant case, it appearing that the taxes and duties due on the subject importations have not been fully paid, We find untenable therefore, the contention that there has been a termination of said importations. We quote with approval the ruling of the Court in Division on this issue, to wit:

> "It is basic that an importation ends only upon full payment of duties and taxes. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles. Thus, failure on the part of the importer to fully settle its taxes does not terminate the importation, giving rise to the right of the respondent to further assess and collect the deficiencies.
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> In the case at bench, the assessment against the petitioner was based on the findings of the respondent after a report on the alleged oil smuggling activities was received by the office. **As a result of the investigation, it was found that petitioner still has unpaid tax obligations. Other than petitioner's self-serving denials, there is nothing in the records to rebut the findings of the respondent.** It bears emphasis that petitioner miserably and significantly failed to refute the findings of the respondent, and in fact, instead of showing proof of payment of the questioned duties and taxes, what petitioner did was to question the validity of the assessment. If indeed, it had settled all its tax obligations for the oil importations it made during the years 1991 to 1995, it should have just presented the necessary receipts and/or documents showing payment thereof." (Emphasis supplied)

Petitioner failed to overcome the presumption of validity and correctness of the assessment

On the last issue, petitioner argues that the Court in Division's pronouncement that petitioner failed to controvert with clear and convincing

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[12]Collector of Customs v. Torres, 45 SCRA 272.

evidence the findings of respondent which is presumed to be valid and correct, is flawed for it presupposes that there is factual basis for such deficiencies.

Respondent counter-argues that it presented a number of witnesses who conducted a series of investigations on the importations of petitioner for the subject period. It insists that the burden of proof lies with petitioner to show that the respondent's duty and tax deficiency assessment is not correct or is not made in good faith. Respondent alleges that petitioner refused and failed to present its proofs of payment, if any, on the questioned thirteen (13) importations [out of thirty eight (38)] and attacked instead the validity of respondent's assessments.

We are not swayed by petitioner's assertions.

Well-settled is the rule that tax assessments are presumed to be correct unless the contrary is shown, and the burden of proof rests upon the taxpayer to overcome this presumption. The determination, however, of a deficiency tax by the Government is only prima facie correct. It bears emphasis that the taxpayer has the duty to prove otherwise.[13]

Respondent's discussion on this issue in its Comment is enlightening, to wit:

> "3. To establish petitioner's tax liability, as well as the correctness and validity of the actions undertaken, herein respondent has presented the testimonies of the following vital witnesses, who were personally involved in the instant matter in their official capacity: *(1)* Mr. Nemesio Magno, Jr., the Investigator-

[13] H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 68 (C.T.A. Case No. 6238), April 24, 2006, citing *Gutierrez v. Collector of Internal Revenue, L-19537, May 20, 1967; Tan Guan v. Court of Tax Appeals, L-23676, April 27, 1967; Republic v. Philippine Rabbit Bus Lines, Inc. L-26862, March 30, 1970.*

On-Case of the Investigation and Prosecution Division (IPD), the Customs Intelligence and Investigation Service (CIIS) of the Bureau of Customs (BOC); *(2)* Mr. Ruben Suan, then Customs Cashier of the Sub-Port of Mariveles-Bataan, who issued the corresponding Bureau of Customs Official Receipts (BCOR) to the petitioner for their partial payments of duties and taxes on the subject oil shipments; and *(3)* Mr. Anacleto Baltazar, Jr., the Customs Appraiser/Examiner of the Sub-Port of Mariveles-Bataan, who was assigned to conduct the re-assessment of the tax and duty deficiency in the light of the partial payments made by the petitioner.

4. Consequently, Mr. Magno, Jr. confirmed that, sometime December 1997, the Office of then Customs Commissioner Guillermo Parayno received reliable information from an informer, with an *alias* Leonardo Canal, that the petitioner was engaged in rampant oil smuggling acitivities at the BOC Sub-Port of Mariveles-Bataan, not just during the period of 1995 to 1997, but also during the period of 1991 to 1994. Said informer issued a letter dated December 8, 1997 to then Commissioner Parayno indicating the same.

5. Immediately thereafter, acting on the afore-cited information, Atty. Marrietta Pacasum, then Chief of Staff of Commissioner Parayno, endorsed the same to Atty. Conrado Unlayao, then Chief of the Investigation and Prosecution Division (IPD) of the Customs Intelligence and Investigation Service (CIIS), for his appropriate action.

Subsequently, Mr. Magno, Jr. was assigned to investigate and substantiate afore-said information. Initially, he was provided by informer Canal with thirty-eight (38) Inward Foreign Manifests involving thirty-eight (38) oil shipments/importations of petitioner URC which were unloaded at the Sub-Port of Mariveles-Bataan covering the period of 1991 up to 1995.

Consequently, in the course of his investigation, he invited the following to a conference in order to shed light and assist him on this matter: *(1)* Amado C. Salangsang, then Customs Collector of Sub-Port of Mariveles-Bataan; *(2)* Julahon Aslahon, then Deputy Collector for Operations of Sub-Port of Mariveles-Bataan; *(3)* Ruben Suan, then Customs Cashier of Sub-Port of Mariveles-Bataan, who provided Mr. Magno with the Bureau of Customs Official Receipts (BCOR) covering the partial payments of the duties and taxes made by petitioner URC; and *(4)* Anacleto

Baltazar, Jr., Customs Examiner/Appraiser of Sub-Port of Mariveles-Bataan.

As a result thereof, it was discovered that the petitioner was allowed to effect the release of their shipments, despite partial payments only of the duties and taxes thereon, by reason of the representation by Esther P. Magleo as General Manager of the petitioner that the same shall be paid directly to the Bureau of Internal Revenue (BIR). Thus, the said release of their oil shipments was conditioned upon the submission of proper proof of payments, particularly BIR official receipts. Up to the time of investigation, however, the petitioner failed to submit and show proof of tax payments made with the BIR despite persistent and constant requests by then Customs Collector of the Sub-Port of Mariveles-Bataan and his customs personnel.

6. After an exhaustive investigation, Mr. Magno, Jr. was able to conclude that, of the thirty-eight (38) oil shipments/importations reported by informer Canal, thirteen (13) thereof appears to be highly questionable by reason of the petitioner's failure to pay the correct corresponding duties and taxes. These **thirteen (13) shipments consist of a substantial quantity of Forty-Three Thousand Two Hundred Sixty-Eight and 529/100 (43,268.529) metric tons of base oil, fuel oil and kerosene (Jet A-1)**. However, it was established that, per review of the payment records, the petitioner only made partial or advance payments of the duties and taxes on these subject shipments, and never bothered to fully pay the same.

7. The initial assessment undertaken by Customs Appraiser/Examiner Anacleto Baltazar, Jr., as shown in his June 8, 1999 Memorandum *(Exhibit "51")*, reveals a duty and tax deficiency of One Hundred Thirty-Eight Million One Hundred Forty-One Thousand Nine Hundred Sixty Seven and 63/100 Pesos (PhP138,141,967.63) approximately for non-payment of additional customs duties, special duties, excise taxes and value-added taxes (VAT) on the questioned thirteen (13) importations.

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8. The petitioner would like the Honorable Court *En Banc* to believe that there is much confusion in the assessment undertaken by the respondent. It, however, conveniently omitted the fact that the same was dependent on their submission of the proper proofs of payments to the BIR of the remaining duties and taxes thereon as agreed upon with the then Deputy Collector for

Operations of Sub-Port of Mariveles-Bataan, Julahon Aslahon. Upon its showing of the proofs of payments to the BIR, the duty and tax deficiency amount was appropriately reduced.

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9. Petitioner further contends that then Customs Commissioner Tan should have favorably considered the December 5, 1996 Memorandum of the Legal Service – Bureau of Customs. It need not be mentioned, however, that the same is merely recommendatory to the respondent.

Considering that the covered importations of the petitioner were subjected to further investigation, it appears, therefore, that herein respondent deemed it appropriate to reject the recommendations of the Legal Service – Bureau of Customs as indicated in the above-stated Memorandum, which greatly favored herein petitioner.

10. In the light of the above actions undertaken by the respondent, it is therefore, erroneous for the petitioner to allege that the factual finding of the respondent pertaining to its failure to pay duty and tax deficiency amounting to PhP143,149,744.41, covering its thirteen (13) importations of 43,268.529 Metric Tons of Oil, during the period of 1991 to 1995, is not adequately supported by substantial evidence....

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12. Petitioner, however, refused and failed to present its proofs of payments, if any, on the questioned thirteen (13) oil importations; and attacked, instead the validity of the respondent's assessments....

Petitioner resisted its burden of presenting the requisite proofs of payments by invoking the three (3) year period rule of keeping importation records, as well as by submitting a lame excuse that the same records were destroyed by floods. xxx"

In view of the foregoing and as correctly ruled by the Court in Division, petitioner failed to discharge its *onus probandi*, hence the presumption in favor of the correctness of the tax assessments stands. We find the following disquisition of the Court in Division to be in accord with law and jurisprudence:

"It is well settled that assessments are entitled to the presumption of correctness and validity; and should, therefore be considered conclusive in the absence of fraud or illegality or a showing that the determination of the same is not correct or does not proceed from a wrong principle of law ***(Commissioner of Internal Revenue vs. Court of Tax Appeals, 195 SCRA 12)***. It is, therefore, the duty of the petitioner to prove that the assessment is not correct and was not made in good faith ***(Sy Po vs. Court of Tax Appeals, 164 SCRA 524)***. Failure on the part of the petitioner to satisfactorily overcome the presumption of regularity and correctness cannot overturn the findings of the respondent.

Considering that petitioner failed to controvert with clear and convincing evidence the findings of the respondent, petitioner is liable to pay the total amount of P138,060,194.42 xxx"

In fine, We are not convinced by petitioner's arguments on the assigned errors to justify a reversal of the questioned Decision and Resolution.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution promulgated on September 7, 2005 and December 6, 2005, respectively are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice