REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

## *THIRD DIVISION*

**3-D INDUSTRIES, INC.,**
*Petitioner,*

**- versus-**

**SECRETARY OF FINANCE and NORTHERN ISLANDS COMPANY, INC.,**
*Respondent.*

**C.T.A. Case No. 8068**

**Members:**

**Bautista,** *Chairperson*
**Palanca-Enriquez,**
**Cotangco-Manalastas,** *JJ.*

**Promulgated:**
JUN 6 2012
11:05 a.m.

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# DECISION

**COTANGCO-MANALASTAS, *J.:***

The case involves a Petition for Review filed by 3-D Industries, Inc. to seek the reversal and setting aside of the 1st Indorsement dated January 19, 2010 issued by the Secretary of Finance that affirmed the decision of the Commissioner of Customs to reverse the decision of the District Collector of Customs of the Port of Manila, and to release the seized goods in Seizure Identification Case No. 2008-033 entitled "Republic of the Philippines vs. Shipment 2x40' Container Van Nos. TCNU9840830 and TSLU6506628 stc. 2,140 pcs. 18" Industrial Fan Model CHC18V and one (1) Lot replacement parts which arrived on October 31, 2007 from China on board S/S 'Franconia V. FRCN744S', Reg. No. BLAO136-07 under B/L No. MNL07100002 covered by Entry No. C-115948".

## STATEMENT OF FACTS

Petitioner 3-D Industries, Inc. (3D) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at No. 377 Goodland Building, Sen. Gil Puyat Ave., Makati City.[1] It is the duly registered owner of the "3D" trademark.[2]

On the other hand, respondent Secretary of Finance is the duly appointed Secretary of the Department of Finance impleaded by reason of his issuance of the assailed 1st Indorsement dated January 19, 2010.[3] Respondent Northern Islands Company, Inc. is a corporation duly organized under the laws of the Philippines, with offices at No. 3 Mercury Avenue, Libis, Brgy. Bagumbayan, Quezon City.[4]

As found by the Secretary of Finance in the assailed 1st Indorsement[5] issued on January 19, 2010, sometime in October 2007, a shipment of 2x40' stc 3D Brand 18" Industrial Fan Model CHC18V and one (1) lot replacement parts in container van nos. TCNU-9840830 and TSLU-6506628 arrived at the Port of Manila (POM) consigned to Northern Islands Company, Inc. (NICI). Subsequently, an alert order was issued by the Director of Customs Intelligence and Investigation Service (CIIS) for possible violation of 3D's intellectual property rights.

Upon examination, respondent NICI failed to show any document to prove that 3-D Industries, Inc. authorized them to import the 3D products. Thus, a Warrant of Seizure and Detention (WSD) was issued by the POM District Collector for violation of Section 155.1 of Republic Act No. 8293 otherwise known as "The

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[1] Par. 3.1, Petition for Review, docket, p. 3.
[2] Par. 1, Joint Stipulation of Fact, Joint Stipulation of Fact and Issue (JSFI), docket, p. 280.
[3] Par. 3.2, Petition for Review, docket, p. 3.
[4] Par. 3.3, Petition for Review, docket, p. 3.
[5] Exhibit "K".

Intellectual Property Code of the Philippines" (IP Code), in relation to Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP), as amended.

Aggrieved by the seizure order and the corresponding warrant of seizure and detention issued by the Collector of Customs, respondent NICI filed an Urgent Motion to Quash dated January 11, 2008, alleging lack of jurisdiction and patent nullity of the seizure order.[6]

On January 24, 2008, petitioner 3D filed its Opposition to Urgent Motion to Quash.[7]

After due proceedings, the parties were directed to formally offer their respective evidence.[8]

Finding that respondent NICI had already ceased to be a corporation due to the lapse of its corporate life, the Collector of Customs concluded that the intellectual property rights of petitioner 3D had been infringed by the importations of respondent NICI. By reason thereof, the Collector of Customs rendered a Decision dated May 13, 2008 ordering the forfeiture of subject importations in favor of the Government.[9]

Respondent NICI subsequently elevated the Decision dated May 13, 2008 with the Commissioner of Customs by filing a Notice of Appeal, attaching thereto a Memorandum of Appeal.[10]

In his 2nd Indorsement dated January 7, 2010, the Commissioner of Customs reversed the Decision of the Collector of Customs stating, among others, that the Securities and Exchange Commission had approved the extension of respondent NICI's corporate life for another fifty (50) years from August 6, 2007.

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[6] Annex "D", Petition for Review.
[7] Annex "E", Petition for Review.
[8] Par. 5.3, Petition for Review, docket, p. 6.
[9] Exhibit "G".
[10] Exhibit "H".

Subsequently, the Commissioner of Customs recommended the release of the seized goods of respondent NICI.[11]

Upon automatic review of the Decision of the Commissioner of Customs, the Department of Finance, in the assailed 1st Indorsement dated January 19, 2010, reversed the Decision dated May 13, 2008 of the Collector of Customs and affirmed the release order issued by the Commissioner of Customs. The said 1st Indorsement issued by the Department of Finance was allegedly received by petitioner on March 9, 2010.

Thereafter, the instant Petition for Review was filed on April 8, 2010.[12]

Respondent NICI filed its Answer[13] on May 5, 2010, interposing the following defenses:

> "8.1. **The sole issue in this petition is whether the Department of Finance gravely erred in applying to the subject *License Agreement* dated 16 April 2004 the presumption of legality/validity.** By applying such presumption, the inevitable conclusion would be that there was no 'violation of Section 155.1 of Republic Act 8293 in relation to Section 2530 (f) of the TCCP, as amended,' *i.e.*, that respondent NICI did not violate the alleged intellectual property rights of petitioner in importing articles bearing the '3D' mark.
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> 8.2. To recall, the Department of Finance in its assailed *1st Indorsement* held:
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> > 'It is uncontestable that there was a License Agreement executed between NICI and 3D and that there was a Board Resolution authorizing Mr. Pe to enter into said Agreement. **For this reason, the Agreement enjoys the presumption of legality and must be recognized**. While it is true that 3D subsequently impugned the execution and legality of the Agreement, the legal implications thereof are matters best left for the courts to decide. To reiterate, for purposes of the seizure proceedings, what should be determined is whether there is sufficient evidence adduced by the claimant to prove that its importation did not violate any

[11] Exhibit "I" and "J".
[12] Exhibit "K".
[13] Docket, pp. 160-169.

provision of the TCCP, as amended, or any other pertinent laws.' (Emphasis and underscoring supplied).

8.3. In this connection, Article II, Section 2.1 of the subject *License Agreement*, a certified true copy of which is attached hereto as Annex '1' provides:

> '2.1 For and in consideration of the sum of the sum (sic) of FIVE HUNDRED THOUSAND PESOS (Php 500,000.00), receipt of which is hereby acknowledged, **Licensor hereby grants unto the Licensee the exclusive right to use the Technology and Trademarks in connection, with the manufacture, importation, distribution and sale of the Products** for the term set forth in Article 3 hereof. **Licensee shall also have the exclusive right to utilize the goodwill developed by Licensor on the 3D mark in the Philippine market** for the term of this Agreement.' (Underscoring and emphasis supplied).

8.4 Clearly, respondent NICI, as the Licensee, has a right to import the products bearing the "3D" mark under the *License Agreement*. Petitioner is now impugning the validity of the *License Agreement*. With all due respect, the issue of whether or not petitioner's unilateral act of impugning the validity of the *License Agreement* is valid, is still pending with the Regional Trial Court of Pasig City, Branch 167, which has exclusive jurisdiction over it. As stated in respondent NICI's *Memorandum of Appeal*, attached as Annex 'G' of the petition, 'NICI filed on 25 April 2005 a *Complaint (for Breach of Contract, Infringement of Trademark, Unfair Competition, Injunction and Damages)* against 3-D Industries, Inc., docketed as Civil Case No. 70359 before the Regional Trial Court of Pasig City, Branch 167'. One of the issues raised in Civil Case No. 70359 is the validity of the *License Agreement*. Thus, only the Regional Trail Court of Pasig City – Branch 167 can competently decide whether the subject *License Agreement* has been rendered invalid by the subsequent renunciation of petitioner. Without such judicial determination, petitioner's self-serving allegation that the subject *License Agreement* is invalid has no legal basis. Even the Department of Finance in its assailed *1st Indorsement* recognized the jurisdiction of the court to resolve the issue.

8.5 Thus, the crucial question that must be resolved in this petition is: Whether the Department of Finance is justified in applying the presumption of validity to the *License Agreement* in order to come up with its conclusion that respondent NICI's importation of '3D' articles was authorized and thus not violative of petitioner's alleged intellectual property rights. An affirmative answer to this question is abundantly supported by jurisprudence. No serious error can, therefore, be attributed to the Department of Finance in issuing its *1st Indorsement* dated 19 January 2010.

8.6 In *G.S.I.S. vs. Province of Tarlac,* G.R. No. 157860, 1 December 2003, which case involved the issue of whether the contract of donation is valid, the Supreme Court held that a duly executed contract carries with it the presumption of validity. To quote the Supreme Court:

> 'The freedom of contract is both a constitutional and statutory right and to uphold this right, courts should move with all the necessary caution and prudence in holding contracts void. **Furthermore, a duly executed contract carries with it the presumption of validity.** In the assailed decision, the Court of Appeals simply ruled that the absence of a prior appraised valuation by the local committee on awards rendered the donation null and void. This, to our mind, did not sufficiently overcome the presumption of validity of the contract, considering that there is no express provision in the law which requires that the said valuation is a condition *sine qua non* for the validity of a donation.
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> 'There being a perfected contract, the Province of Tarlac, through Gov. Yap, cannot revoke or renounce the same without the consent of the other party. From the moment of perfection, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage, and law. **The contract has the force of law between the parties and they are expected to abide in good faith by their respective contractual commitments. Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of the other**. It is a general principle of law that no one may be permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party.' (Emphasis and underscoring supplied).

8.7 In *Tating vs. Marcella*, G.R. No. 155208, 27 March 2007, which involved a complaint for the nullification of a sales agreement, the Supreme Court reiterated the well-entrenched rule that the legal presumption is in favor of the validity of contracts. Thus:

> '[T]he fact remains that private respondents failed to prove by clear, strong and convincing evidence beyond mere preponderance of evidence that the contract of sale between Daniela and petitioner was simulated. **The legal presumption is in favor of the validity of contracts and the party who impugns its regularity has the burden of proving its simulation**. Since private respondents failed

to discharge the burden of proving their allegation that the contract of sale between petitioner and Daniela was simulated, the presumption of regularity and validity of the October 14, 1969 Deed of Absolute Sale stands.' (Emphasis and underscoring supplied).

8.8 In *Delfin vs. Billones,* G.R. No. 146550, 17 March 2006, the Supreme Court agreed with the petitioners who insisted that respondents failed to prove that fraud attended the sale of certain parcels of lot, and said that 'a duly executed contract carries with it the presumption of validity.' The well-settled principle that 'a duly executed contract carries with it the presumption of validity' was also invoked by the Supreme Court in *Ramos vs. Heirs of Honorio Ramos, Sr.*, G.R. No. 140848, 25 April 2002.

8.9 In the instant controversy, what is involved is a *License Agreement* which appears on its face as valid, regular and duly executed. Hence, absent any definitive judicial holding that the *License Agreement* is absolutely void and of no effect from the very beginning, it enjoys the presumption of validity. Petitioner's act of renouncing it unilaterally without the consent respondent NICI cannot destroy such presumption of validity. And since the assailed importation was made pursuant to a *License Agreement* which must be presumed valid, it necessarily follows that such importation must likewise be presumed to be valid, regular and lawful. It is therefore not an error, much less a serious one, for the Department of Finance to hold that respondent NICI did not violate petitioner's alleged intellectual property rights when it imported '3D' articles.

9. Petitioner's reliance on the Inter Partes Case No. 14-2008-00039 in the Intellectual Property Office ('IPO') entitled '*3-D Industries, Inc. vs. Northern Islands Co., Inc., for and on behalf of 3-D Industries, Inc.,'* is solely misplaced. That case has no relevance to the instant petition. For one, the issue involved therein is not about the importation of articles bearing the '3D' mark but whether the applicant can be allowed to register in the IPO the mark '3D Jet Cooler and Device.' For another, the IPO did not rule on the validity or invalidity of the *License Agreement*. In fact, the IPO expressly acknowledged in the Inter Partes Case No. 14-2008-00039 that its ministerial function 'does not include the authority to determine the scope and legal effect of the instruments that are submitted for recordal purposes, not to nullify or cancel the said instrument as such issue can only be determined in an ordinary case by the Courts.' Thus, Inter Partes Case No. 14-2008-00039 is immaterial to the resolution for the instant petition.

10. Finally, petitioner wants to create the impression that the filing of the instant petition was to protect its purported intellectual property rights. In reality, the instant petition is one of the several harassment suits filed by Gilbert Guy, the President of petitioner, for the purpose of getting control of respondent NICI and harassing the present

management thereof. The instant petition is simply an off-shoot of the corporate battle between Gilbert Guy, on the one hand, and his mother and sisters, on the other hand, to gain control of respondent NICI. Unfortunately for Gilbert Guy and his numerous dummies and *alter egos*, the Supreme Court in the consolidated cases of *Gilbert Guy vs. Court of Appeals, et. al.,* G.R. Nos. 165849, 170185, 170186, 171066 and 176650 (dated 10 December 2007) decided against Gilbert Guy – the individual behind the instant petition - and upheld the present management's right to control and manage respondent NICI."

Public respondent Secretary of Finance filed his Answer[14] on May 31, 2010 and alleged the following special and affirmative defenses:

"1. On January 19, 2010, public respondent issued an indorsement affirming the decision and recommendation of the Commissioner of Customs which (1) reversed the decision of the District Collector, Port of Manila; and (2) ordered the release of the seized articles in Seizure Identification Case No. 2008-033. Public respondent held that the importation by private respondent of the seized articles did not infringe on petitioner's intellectual property rights and/or violate the provisions of the Tariffs and Customs Code of the Philippines.

2. Petitioner now argues that public respondent seriously erred when he ruled that private respondent's importation of articles which bear a '3D' mark did not infringe on petitioner's intellectual property rights.

2.1 To support its argument, petitioner claims that private respondent imported said articles without the consent and conformity of petitioner, which allegedly owns the '3D' mark, thereby violating petitioner's intellectual property rights over said mark under Section 151.1 of Republic Act (R.A.) No. 8293 or the Intellectual Property Code.

3. The argument is baseless.

3.1 Sections 155 and 155.1 of R.A. No. 8293 provide:

**Section 155**. *Remedies; Infringement.* – Any person who shall, **without the consent** of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive;

[14] Docket, pp. 192-199.

3.2 In this case, private respondent's importation of articles bearing the '3D' mark was duly authorized under the License Agreement dated April 16, 2004 entered into by petitioner (licensor) and private respondent (licensee). **Section 2.1, Article II** of said agreement specifically provides:

> '2.1 For and in consideration of the sum of the sum of (sic) FIVE HUNDRED THOUSAND PESOS (Php 500,000.00), receipt of which is hereby acknowledged, Licensor hereby grants unto the Licensee the exclusive right to use the Technology and Trademarks in connection, with the manufacture, importation, distribution and sale of the Products for the term set forth in Article 3 hereof. Licensee shall also have the exclusive right to utilize the goodwill developed by Licensor on the 3D mark in the Philippine market for the term of this agreement.

3.3 Moreover, **Section 3.1, Article 3** thereof provides:

> '3.1 The term of this Agreement and the license granted hereunder shall be twenty (20) years. Licensee shall have the right of first refusal over any proposals for acquisition made by the parties. Licensor shall inform Licensee of any such offer at least six months prior to the end of the term.

3.4 Private respondent's use of the 3D mark on its imported articles was validly authorized under the said license agreement. Notably, the imported articles arrived at the Port of Manila sometime in October 2007 which was well within the term or effectivity of the said license agreement.

4. Petitioner claims, however, that said license agreement is invalid.

4.1. The claim is without merit.

> 4.2. Subject license agreement appears to have been duly executed between petitioner and private respondent, through their duly authorized representative, Paulino Delfin Pe and Simny Guy, respectively, and duly notarized by a certain Atty. Jorge Alfonso C. Melo, a notary public. Simply, subject license agreement appears to be valid and regular on its face. As such, it enjoys the presumption of validity.

4.3 In **Delfin, et. al., vs. Billones, et. al.**, the Supreme Court held:

> A duly executed contract carries with it the presumption of validity. The party who impugns its regularity has the burden of proving its simulation. A notarized document is executed to lend truth to the statements contained therein and to the authenticity of the signatures. Notarized documents enjoy the presumption of regularity which can be overturned only by clear and convincing evidence.

4.4 In this case, other than its bare allegation, petitioner has not presented any clear and convincing evidence to prove the invalidity of subject license agreement.

4.5 Thus, absent any judicial declaration as to its invalidity and it appearing to be valid, regular and duly executed, subject license agreement continues to enjoy the presumption of validity.

5. Accordingly, private respondent's importation of articles bearing the '3D' mark did not violate petitioner's intellectual property rights over said mark and the provisions of the Tariffs and Customs Code of the Philippines."

The case was set for pre-trial conference on July 2, 2010.[15] Respondent Northern Islands, Co., Inc. filed its Pre-trial Brief on June 28, 2010[16]; while petitioner filed its Pre-trial Brief on June 29, 2010.[17] Public respondent Secretary of Finance also filed his Pre-trial Brief on September 16, 2010.[18]

Subsequently, the parties filed their Joint Stipulation of Fact and Issue on November 30, 2010.[19] A Pre-trial Order was accordingly issued by the Court on January 21, 2011, which marked the termination of the pre-trial of this case.[20]

Trial then ensued. However, during the hearing held on September 19, 2011, the parties agreed that the case involves a purely legal issue. Thus, the Court granted both parties thirty (30) days to submit their memoranda. Also, upon motion, petitioner was ordered to file its Formal Offer of Evidence.[21]

On October 18, 2011, public respondent Secretary of Finance submitted his Memorandum[22]; while petitioner filed its Memorandum[23] on October 19, 2011. On

[15] Docket, p. 212.
[16] Docket, pp. 213-223.
[17] Docket, pp. 225-231.
[18] Docket, pp. 262-267.
[19] Docket, pp. 279-281.
[20] Docket, pp. 292-296.
[21] Docket, p. 455; TSN dated September 19, 2011, pp. 53-56.
[22] Docket, pp. 456-469.
[23] Docket, pp. 471-484.

the same date, petitioner also filed its Formal Offer of Evidence.[24] On the other hand, respondent Northern Islands, Co., Inc. filed its Memorandum[25] on November 2, 2011.

Accordingly, a Resolution was issued by the Court on December 22, 2011, admitting Exhibits "A" to "T-1" as part of petitioner's evidence. Furthermore, considering the filing of the parties' memoranda, the case was submitted for decision as of the date of promulgation of the Resolution on December 22, 2011.[26]

## STATEMENT OF ISSUE

The parties submitted the following issue for this Court's resolution:

> "Whether the Secretary of Finance erred in affirming the Decision of the Commissioner of Customs which reversed the Decision of the District Collector, Port of Manila and ordered the release of the seized goods in Seizure Identification Case No. 2008-033."[27]

## DISCUSSION/RULING

Before addressing the sole issue raised by the parties for decision, the Court deems it necessary to determine first whether petitioner 3-D Industries, Inc. is a real party in interest in this case.

Well-entrenched is the rule that it is only in the name of a real party in interest that a civil suit may be prosecuted. Section 2 of Rule 3 of the 1997 Revised Rules of Civil Procedure, as amended, provides:

> "SEC. 2. *Parties in interest.* - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest." 

[24] Docket, pp. 486-491.
[25] Docket, pp. 610-635.
[26] Docket, pp. 767-768.
[27] Par. 1, Joint Stipulation of Issue, JSFI, docket, p. 280.

The established rule is that a real party in interest is one who would be benefited or injured by the judgment, or one entitled to the avails of the suit. The word "interest," as contemplated by the Rules, means material interest or an interest in issue and to be affected by the judgment, as distinguished from mere interest in the question involved or a mere incidental interest. Stated differently, the rule refers to a real or present substantial interest as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest. As a general rule, one who has no right or interest to protect cannot invoke the jurisdiction of the court as party-plaintiff in an action.[28] To qualify a person to be a real party in interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced.[29]

The afore-quoted rule has two requirements, namely: (1) to institute an action, the plaintiff must be the real party in interest; and (2) the action must be prosecuted in the name of the real party in interest. Necessarily, the purposes of this provision are (1) to prevent the prosecution of actions by persons without any right or title to or interest in the case; (2) to require that the actual party entitled to legal relief be the one to prosecute the action; (3) to avoid a multiplicity of suits; and (4) to discourage litigation and keep it within certain bounds, pursuant to sound public policy.[30]

At the outset, seizure and forfeiture proceedings are conducted in line with the Bureau of Customs' jurisdiction and power to prevent and suppress smuggling

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[28] *Ortiz vs. San Miguel Corporation*, G.R. No. 151983-84, July 31, 2008.
[29] *Miñoza vs. Hon. Cesar Tomas Lopez, et. al.*, G.R. No. 170914, April 13, 2011.
[30] *Supra*, footnote no. 28.

and other frauds on customs; and to enforce tariff and customs laws.[31] The Tariff and Customs Code of the Philippines subjects to forfeiture any article the importation of which is effected or attempted contrary to law or any article of prohibited importation.[32]

Relevantly, Section 166 of the Intellectual Property Code provides:

> "SEC. 166. *Goods Bearing Infringing Marks or Trade Names.* - **No article of imported merchandise which shall copy or simulate the name of any domestic product, or manufacturer, or dealer, or which shall copy or simulate a mark registered in accordance with the provisions of this Act,** or shall bear a mark or trade name calculated to induce the public to believe that the article is manufactured in the Philippines, or that it is manufactured in any foreign country or locality other than the country or locality where it is in fact manufactured, **shall be admitted to entry at any customhouse of the Philippines.** In order to aid the officers of the customs service in enforcing this prohibition, any person who is entitled to the benefits of this Act, may require that his name and residence, and the name of the locality in which his goods are manufactured, a copy of the certificate of registration of his mark or trade name, to be recorded in books which shall be kept for this purpose in the Bureau of Customs, under such regulations as the Collector of Customs with the approval of the Secretary of Finance shall prescribe, and may furnish to the said Bureau facsimiles of his name, the name of the locality in which his goods are manufactured, or his registered mark or trade name, and thereupon the Collector of Customs shall cause one (1) or more copies of the same to be transmitted to each collector or to other proper officer of the Bureau of Customs. (Sec. 35, R.A. No. 166)" *(Emphasis supplied)*

Likewise, Customs Administrative Order No. 6-2002 was issued by the Secretary of Finance to implement the provisions of the Intellectual Property Code relating to importations prohibited under the same Code. It specifically provides for special provisions relating to seizure proceedings involving infringing goods. The objectives of the said Customs Administrative Order are quoted as follows:

> "CUSTOMS ADMINISTRATIVE ORDER NO. 6-2002
>
> RULES AND REGULATIONS IMPLEMENTING R.A. 8293, ALSO KNOWN AS THE INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES ('IP CODE') IN RELATION TO SECTIONS 51-60 OF

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[31] Section 602 of the TCCP.
[32] Section 2530(f) of the TCCP.

THE TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS AGREEMENT ('TRIPS'), AMENDING FOR THE PURPOSE CUSTOMS ADMINISTRATIVE ORDER (CAO) NO. 7-93 ON CUSTOMS BORDER CONTROL

By authority of Section 608 of the Tariff and Customs Code of the Philippines, as amended, in relation to the IP Code, the following rules and regulations are hereby prescribed:

I. Objectives

1. To give meaning and substance to laws prohibiting the importation of goods or products that infringe upon all intellectual property rights as defined in the law.

2. To enhance existing procedures (CAO 7-93), in conformity with international standards specifically set in the TRIPS Agreement on special border control, to prevent the entry into the country of certain prohibited merchandises.

3. To set up administrative guidelines to expedite the handling and disposition of goods the importation of which is prohibited under the IP Code and other related laws.

4. To stress the seriousness of the government, more particularly the Bureau of Customs ('Bureau'), in its drive to combat piracy and counterfeiting in violation of the IP Code and other related laws."

The seizure and forfeiture proceedings in this case were conducted due to respondent NICI's alleged violation of Section 155.1 of the Intellectual Property Code.

It must be pointed out that forfeiture is defined as the divestiture of the title to property from owner to the sovereign power without compensation as a result of default or offense.[33] Forfeiture proceedings are proceedings *in rem* and are directed against the *res*.[34] Since forfeiture proceeding is *in rem*, the imported article under

[33] Nague, Handbook on the Tariff and Customs Code of the Philippines, as amended, and the Customs Brokers Act of 2004 (R.A. 9280) and its Implementing Rules and Regulations, First Edition 2005, p. 544, citing Barrons Law Dictionary.

[34] *Commissioner of Customs vs. Court of Tax Appeals, et al.*, G.R. No. L-31733, September 20, 1985 citing *Vierneza vs. Commissioner of Customs*, 24 SCRA 394.

seizure/forfeiture proceeding is considered the offender and not the importer or any interested party therein.[35]

Taking into consideration all the foregoing discussion, it is clear that the real parties in interest in forfeiture cases are the offender, which pertains to the imported article under seizure/forfeiture proceedings as may be represented by the importer, and the other one is the government. However, petitioner in this case is neither an importer of the article under seizure/forfeiture proceedings nor a representative of the government.

Also, it must be noted that the seizure and forfeiture proceedings in this case were conducted by the government for the main purpose of enforcing the administrative fines or forfeiture incident to unlawful importation of goods or their deliberate possession.[36] On the other hand, petitioner's right is anchored mainly on respondent NICI's alleged violation of petitioner's intellectual property rights. Clearly, petitioner has no material interest or an interest in issue or real or present substantial interest in the outcome of the forfeiture case. Therefore, petitioner cannot invoke the jurisdiction of the Court as party-petitioner in this case.

Nevertheless, even assuming that petitioner 3D is the real party in interest in this case, the instant Petition for Review should still be dismissed since the Court has no jurisdiction over the nature or subject matter of the present case.

Section 7 of Republic Act No. 1125, as amended by Republic Act Nos. 9282 and 9503, enumerates the cases over which this Court has appellate jurisdiction. The relevant portions of Section 7 are quoted for ready reference: 

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[35] Nague, Handbook on the Tariff and Customs Code of the Philippines, as amended, and the Customs Brokers Act of 2004 (R.A. 9280) and its Implementing Rules and Regulations, First Edition 2005, pp. 459-460

[36] *Feeder International Line, Pte., Ltd., et al. vs. Court of Appeals, et al.*, G.R. No. 94262, May 31, 1991.

"SEC. 7. *Jurisdiction.* The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

(6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;"

In other words, the Court shall exercise exclusive appellate jurisdiction over decisions of the Secretary of Finance in customs cases brought before it pursuant to Section 2315 of the TCCP. Section 2315 of the said Code is quoted as follows:

"SEC. 2315. *Supervisory Authority of Commissioner and Secretary of Finance in Certain Cases.* – If **any case involving the assessment of duties**, the Collector renders a decision adverse to the Government, such decision shall be automatically elevated to, and reviewed by, the Commissioner; and if the Collector's decision would be affirmed by the Commissioner, such decision shall be automatically elevated to, and be finally reviewed by, the Secretary of Finance: *Provided, however*, That if within thirty (30) days from receipt of the record of the case by the Commissioner or by the Secretary of Finance, as the case may be, no decision is rendered by either of them, the decision under review shall be final and executory: *Provided, further*, That **any party aggrieved by either the decision of the Commission or of the Secretary of Finance may appeal to the Court of Tax Appeals with thirty (30) days from receipt of a copy of such decision**." *(Emphasis supplied)*

It is evident from the above-quoted provisions that the Court has jurisdiction over rulings of the Secretary of Finance on any case involving assessment of duties when he would exercise his supervisory authority as provided for under Section 2315 of the TCCP.

Applying the foregoing, records show that the subject matter of the instant Petition for Review is a ruling of the Secretary of Finance over seizure and forfeiture proceedings brought before him for automatic review which do not involve assessment of any duties. Rather, the subject seizure and forfeiture proceedings were instituted purely in view of the alleged violation by the importer respondent NICI of the provisions of the Intellectual Property Code. Clearly, the instant Petition for Review does not come within the purview of the cases mentioned in Section 2315 of the Tariff and Customs Code in relation to Section 7(a)(6) of Republic Act No. 1125, as amended by Republic Act Nos. 9282 and 9503.

It bears stressing that the Court of Tax Appeals is a court of limited jurisdiction and as such, its jurisdiction to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implication.[37] In view thereof, the Court cannot take cognizance of the instant Petition for Review since it has no jurisdiction over the subject matter of the present case.

At this juncture, it must be pointed out that courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[38]

With the Court's findings that it has no jurisdiction to entertain the appeal of the ruling issued by the Secretary of Finance in this case, the resolution of the sole issue as stipulated by the parties is now considered moot.

**WHEREFORE**, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

**SO ORDERED.**

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

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[37] *Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp., et. al.*, G.R. No. 158540, July 8, 2004.
[38] *Ace Publications, Inc. vs. The Commissioner of Customs, et al.*, G.R. No. L-18808, May 29, 1964.

WE CONCUR:

**LOVELL R. BAUTISTA**
Associate Justice

(Inhibited)
**OLGA PALANCA-ENRIQUEZ**
Associate Justice

## ATTESTATION

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

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## CERTIFICATION

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

**ERNESTO D. ACOSTA**
Presiding Justice