

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CESAR S. URBINO, SR.,
doing business under the name
and style DURAPROOF SERVICES,
Petitioner,

- versus -

C.T.A. CASE NO. 4497

HON. SALVADOR M. MISON, in
his capacity as Commissioner
of Customs, District Collector
of Customs Job P. Guinto and
Acting District Collector of
Customs John S. Sy, both of
San Fernando, La Union,
Respondents.

5/4

x - - - - - x

BANCO DO BRASIL, S.A.,
Intervenor.

x - - - - - x

R E S O L U T I O N

Presented before us for resolution is respondents' "Motion To Dismiss" filed on November 23, 1990 questioning the right of Mr. Cesar Urbino, Sr., herein petitioner, to institute the present petition for review.

On September 27, 1990, petitioner filed a petition praying to set aside the decision of respondent Commissioner of Customs in Customs Case No. 90-22 (SFLU S.I. No. 2-89) and SFLU S.I.

RESOLUTION
CTA CASE NO. 4497

- 2 -

No. 3-89 ordering the forfeiture in favor of the government the vessel M/V "Star Ace" and her cargoes, respectively.

Instead of filing an answer, respondents moved for the dismissal of the petition. Respondents contend that petitioner has no legal capacity to sue since he was never a party in the seizure and forfeiture proceedings in Customs Case No. 90-22 (SFLU S.I. No. 2-89) and SFLU S.I. No. 3-89. Neither is he a real party in interest because he does not stand to lose from the decision of respondents. If at all his cause of action should be against the owner who benefitted from his salvaging act.

Moreover, petitioner's failure to present his permit or license as salvor negates any right or authority on his part to claim any interest or lien as salvor. Finally, petitioner before filing the instant petition has already instituted a separate civil action involving the same parties and subject matter the purpose of which is to stop the disposition of the vessel M/V "Star Ace" and her cargoes.

Petitioner filed his opposition and/or comment to respondents' motion to dismiss. He insisted that he was a party in the forfeiture and seizure

RESOLUTION
CTA CASE NO. 4497

- 3 -

proceedings in SFLU Identification Case No. 2-89. As proof thereof, he pointed at the comment he filed on the formal offer of evidence of intervenor Med Line Phils., Inc. (Annex P of Petition, pp. 75-A to 75-D, CTA rec.) during the hearing conducted in the customs level. In another related case, Med Line Phils., Inc. in its petition filed in CTA Case No. 4494 states that the "parties, i.e., the government, Sing Kong Trading Co., and herein petitioners, presented their respective evidences with the exception of intervenor Cesar Urbino who waived presentation of proof." (Annex 5-Z of Opposition to Respondents' Motion to Dismiss, pp. 246-247, CTA rec.). This was admitted to by respondent Commissioner in his answer to Med Line's petition in CTA Case No. 4494. (Annex D of Rejoinder to Reply, pp. 313-314, CTA rec.).

Without objection and as a comment petitioner admits that as salvor of M/V "Star Ace" and her cargoes he has a cause of action against the owner of the vessel. In order to protect his lien, petitioner filed a civil action with the Regional Trial Court of Manila (Civil Case No. 51451) against the owner of the vessel M/V "Star Ace" and her cargoes. On the other hand, the present case, according to petitioner, involves a question of

RESOLUTION
CTA CASE NO. 4497

- 4 -

whether respondents' decision ordering the forfeiture and seizure of M/V "Star Ace" and her cargoes in favor of the government was valid or not. He maintains that these two cases are different from each other. In fact, respondents have been excluded in Civil Case No. 51451. A dismissal in their favor have been approved by the Regional Trial Court of Manila.

Likewise, as proof of his authority to act as salvor and as such a real party in interest, petitioner presented a copy of his "Salvor's Certificate of Registration" issued by the Philippine Coast Guard (see Annex 4-Z of Opposition to Respondents' Motion to Dismiss, p. 244, CTA rec.).

In reply to petitioner's opposition, respondents maintain that petitioner failed to present any evidence to indubitably prove his participation in the customs forfeiture proceedings. Neither did he support the grounds relied upon that he is a real party-in-interest.

On April 3, 1991, as a last ditch of proving this case should not be dismissed, petitioner filed a supplemental pleading submitting to the court additional annexes as a rejoinder to respondents' reply. Transcript of Stenographic notes of

RESOLUTION
CTA CASE NO. 4497

- 5 -

hearings held on August 10, 1989 and September 5, 1989 were presented to show petitioner's participation in the customs hearings relative to this case.

After careful deliberation and scrutiny of the records of this case, this Court finds for respondents.

It appears that petitioner's counsel, Atty. Santos Abenir, entered his appearance only in the customs seizure proceedings upon filing of a motion for reconsideration on August 5, 1989. In the hearing of August 10, 1989, counsel for the government, Atty. Remiglo Ramirez, objected to the motion on the basis that as the alleged salvor he has no personality. In fact, it was stressed by the hearing officer that his motion was filed out of time since the case has already been terminated and the same submitted for decision by the respondent. He was never a party in the first place so to speak. Thus, in the decision of respondent no mention of petitioner was made in the title nor in the body thereof. Therefore, not being the proper party, petitioner cannot now institute the present petition for review with this Court.

RESOLUTION
CTA CASE NO. 4497

- 6 -

However, petitioner's right as alleged salvor of M/V "Star Ace" and her cargoes may very well still be protected. For whatever legal rights or interests he may have as salvor petitioner's remedy is to intervene. Indeed as a proper recourse, petitioner filed a motion for leave to intervene in CTA Case No. 4500 ("Sing Kong Trading Company and Omega Sea Transport Company v. Hon. Salvador M. Mison, et. al.").

Aside from the motion to intervene filed by petitioner in CTA Case No. 4500, petitioner also admits that he had already filed a civil suit in the Regional Trial Court of Manila (Civil Case No. 51451) in order to protect his lien as salvor. Clearly, his only interest is to "be paid out of the services legitimately done for the benefits of the subject vessel and its cargoes and/or its owners, in accordance with the Salvage Law." (see Annex A, p. 305, CTA rec.). All the available remedies he can think of he has done. Thus, in order to avoid multiplicity of suits, this Court, best to the interest of all parties concerned, deems it fit to dismiss the petition.

WHEREFORE, respondents' motion to dismiss filed on November 23, 1990 is hereby GRANTED pursuant to Section 1(d) of Rule 16 of the Revised

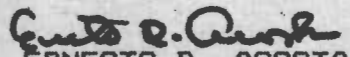
RESOLUTION
CTA CASE NO. 4497

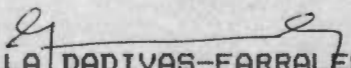
- 7 -

Rules of Court. Case dismissed without
pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, May 4, 1992.


ERNESTO D. ACOSTA
Associate Judge


STELLA DADIVAS-FARRALES
Acting Associate Judge


CONSTANTE D. ROAQUIN
Associate Judge