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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MILWAUKEE INDUSTRIES CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. CASE NO. 5160

Promulgated:

APR 08 1997

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DECISION

Subject of petition for review is the decision of the Deputy Commissioner of Customs, acting under the authority of the respondent, in Customs Case No. 94-09 affirming the decision of the Collector of Customs of the Port of Manila in Manila Seizure Identification No. 94-055, dated August 3, 1994, ordering the forfeiture of petitioner's imported shipment of steel billets for violation of Section 2530(f) and (i) 3, 4, and 5 of the Tariff and Customs Code, as amended.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines. It is an importer of steel billets and has a factory located in Apalit, Pampanga where it forges, cuts, manufactures, and molds the steel billets into finished products available for the local market such as plates, sheets, pipes, rods, bars, etc.

Hereunder are the antecedent facts.

On November 5, 1993, a Commercial Letter of Credit was issued by the Far East Bank and Trust Company (FEBTC) to herein petitioner in the amount of US$2,071,000.00 in favor of Klockner & Co. AG of Germany for the importation of 9,500 metric tons of secondary steel billets. At about the same time, petitioner through its customs broker, Schmitz Transport and Brokerage Corporation ("Schmitz" for brevity), filed with FEBTC the required Import Entry Declaration and deposited the amount of P1,863,598.00 representing the estimated duty thereon. An official receipt of the Bureau of Customs with number 30277274 was issued correspondingly on said deposit.

Upon arrival of the shipment of steel billets in Manila on February 1, 1994, Customs Inspector Jimmy Pastoriza and Customs Guards Generoso Mirallo and Lucas Almendras were assigned to board the carrying vessel S/S "Solsyn" with the task of supervising the unloading of the said billets. On the same date, Mr. Jose Garcia, a supervisor of Schmitz, boarded said vessel and presented to Mr. Pastoriza a copy of a Permit to Discharge Shipside, otherwise known as the Shipside Permit, authorizing the discharge of the subject shipment to the barges of Transport Venture, Inc. On account of said permit, the entire shipment was issued thirteen (13) Boat Notes by Mr. Pastoriza and based on them, the shipment was allowed to be discharged. The discharging took six days from February 1 to February 6, 1994. Soon after that, allegedly by authority of said Boat Notes according to the petitioner, the shipment, upon unloading at BASECO, was loaded to trucks of Schmitz and later transported to the factory of the petitioner in Apalit, Pampanga.

Afterwards, on the strength of a derogatory information allegedly received by the Customs Intelligence and Investigation Division (CIID) of respondent's Bureau, an investigation on the circumstances attendant to the transfer of the subject shipment to the premises of petitioner was initiated. The CIID discovered that the subject shipment was delivered without the filing of an import entry and the payment of the customs duty and taxes due thereon. Hence, on March 14, 1994, an application for the issuance of a Warrant of Seizure and Detention was filed and the warrant was subsequently issued the following day, March 15, 1994, with the return thereof, as shown on the face of the warrant, made on March 17, 1994 at 5:30 in the afternoon (Exhibit "G").

Facts show, however, that prior to the return of the warrant , a certain Mr. Alfredo S. Gloria, a consultant of the petitioner, conferred with the respondent and explained the circumstance surrounding the transfer of the shipment to the premises of petitioner's factory before the payment of duty and taxes due thereon. Thereafter, Mr. Gloria wrote the respondent a letter, dated March 16, 1994 (Exhibit "M"), thanking the latter for receiving and listening to him and attached therewith a customs entry covering the importation and two checks, one for the amount of P5,000,000.00 and another in the amount P4,944,864.00 representing the duty and taxes due on the subject shipment.

Subsequent events reveal that on March 17, 1994, a certain Atty. Aaron Redubla, an assistant of the respondent, placed a note on said letter (Exhibit "M-1") instructing Mr. Oscar Brillo, the Collector of Customs of the Port of Manila to further process and release the shipment upon payment of duties and taxes, to quote:

> "Coll. Brillo/Sir,
>
> Per instruction, pls. for further processing and release upon payment of T/D. Thanks"

On the same letter, Collector Brillo also placed a note ordering the continuation of the processing of the customs entry on the subject shipment and the acceptance of the payment of duties and taxes by checks (Exhibit "M-2", Answer, par. 9, p. 4). The latter checks were duly received by respondent's Bureau on March 17, 1994 (Exhibits "H" and "I").

Notwithstanding the acceptance of the payment of duties and taxes on the subject shipment, however, the Collector proceeded with the hearing of the seizure and forfeiture proceeding on the shipment under S.P. No. 94-055.

On August 5, 1994, petitioner received a copy of the decision of the Collector, dated August 3, 1994, ordering the forfeiture of the subject shipment. Consequently, a notice of appeal from said decision was filed before the respondent on the same date. On September 13, 1994, petitioner received a copy of respondent's decision affirming the decision of the Collector. Petitioner filed a motion for reconsideration of said decision but was eventually denied by the respondent in an Order dated October 4, 1994.

Hence, this appeal.

At bar, respondent avers, *inter alia*, the following denial and affirmative defenses in refutation of petitioner's allegation on what actually transpired during the transfer of the subject shipment from the carrying vessel to the petitioner's factory in Apalit, Pampanga, to quote:

5. The allegations on paragraph 2.6 are DENIED as erroneous conclusions of law and/or facts, the truth being that said Shipside Permit was not the document upon which the release of the shipment was allowed by Mr. Pastoriza, the Customs Inspector on Board, but upon the presentation of the following:

a. Import Entry No. 01370-94 purportedly covering the shipment of 11,985 pieces of Secondary Steel Billets consigned to MILWAUKEE INDUSTRIES CORPORATION but which turned out to be SPURIOUS;

b. Bureau of Customs Official Receipt No. 30277274 dated November 5, 1993 in the amount of P1,863,598.00 (the ADVANCE DEPOSIT).

c. Bureau of Customs Official Receipt No. 30277901 dated February 17, 1994 in the amount of P9,972,548.00 (which turned out to be SPURIOUS).

Therefore, at the time the shipment was transferred to the importer's premises, there were:

a. no import entry filed

b. no final payment of Customs duties/taxes; and

c. no security to guaranty payment thereof.

These circumstances, henceforth, fall squarely within the punitive provisions of Section 2530(f) and (i)-3, 4 and 5 of the Tariff and Customs Code of the Philippines.

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17. Mr. Pastoriza based the release of the shipment on the mistaken belief that the entry and the payment of duties/taxes were regularly effected.

18. The Boat Notes in this case were not validly issued.

19. Customs conduction guards are assigned only in cases of warehousing goods where duties/taxes are not paid upon importation in accordance with standard operating procedures. The present case is one of consumption entry. If the entry is regularly filed and duties/taxes paid, no custom conduction guards are necessary. The presence or absence of conduction guards in this case is, therefore, not material to the effectiveness of the seizure.

20. The Commissioner did not err in affirming forfeiture because the shipment found its way to the importer's premises without a proper document (filing of import entry) and the payment of Customs duties/taxes. The shipment had been in the importer's premises for more than one (1) month and partially consumed before the anomaly was discovered.

21. The Commissioner of Customs did not err in holding that the acceptance of duties and taxes was only conditional and no final release of the shipment was granted. His decision was based on his power of supervision and control over customs revenue to avert further losses to the government as the shipment was no longer within customs premises and already partially consumed. There was here an urgency and a practical consideration.

22. Petitioner itself agrees that payment of duties and taxes does not prejudice the continuance of the seizure proceedings (Collector of Customs v. Torres, 45 SCRA 270 [1972]). The facts of the instant case are worse than that in the cited case of Torres. In this case, there was no entry filed nor full payment of the duties and taxes prior to the seizure. The violations of Sections 2530(f) and (i) 3, 4 and 5 were already consummated when, for reason of expediency, duties/taxes were allowed to be paid. However, there was no Permit to Deliver (PDIG) issued signifying that there was no final delivery. The importation is by no means terminated as defined in Section

> 1202 of the Tariff and Customs Code of the Philippines.
> (Answer, pp. 6-7, pp. 58-59, CTA records)

In its memorandum, respondent elaborated on the circumstances surrounding the alleged illegal release of the subject shipment, as follows:

> xxx xxx xxx
>
> 2. Schmitz Transport and Brokerage Corp. (Schmitz for brevity) is a brokerage and forwarding firm doing business at the MICP and Port of Manila. Noel Aro is its Executive Vice President and General Manager while Jose Pepe Garcia is its supervisor.
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> xxx xxx xxx
>
> 12. Sometime during the second day of discharging, Noel Aro had lunch with J. Pastoriza and L. Almendras. He made representation to tow the barge and effect delivery under deferred payment to Milwaukee allegedly because the consignee was having financial difficulty. (testimony of N. Aro, TSN p. 15, May 31, 1994, seizure proceedings).
>
> 13. About the fourth day of discharging, K. Garcia presented to J. Pastoriza a copy of Entry No. 013570-94 and as well as the alleged final payment of ₱9,972,548.00 under O.R. No. 30277901. J. Pastoriza compared the xerox copy of the entry with the original document. He kept the photocopy. (Testimony of J. Pastoriza, T.S.N. pp. 10-12, April 14, 1994, seizure proceedings).
>
> 14. The discharging took all of six (6) days from February 1, to February 6, 1994. The Customs Inspector and the Customs Guard, however, stayed in the vessel till February 10, 1994. (testimony of G. Mirallo, T.S.N., p. 7, March 28, 1994, seizure proceedings).
>
> 15. No customs guards accompanied the lighter, as the shipment was already released

to the cosignee according to J. Pastoriza (testimony of G. MIrallo, T.S.N. p. 10, March 28, 1994, seizure proceedings).

16. Eventually the shipment found its way to consignee's bodega at Apalit, Pampanga.

17. The anomalous release was unearthed by the CIIS on or about March 15, 1994.

18. In the ensuing verification that was conducted, it was disclosed that Milwaukee's entry No. 013570-94 is spurious. Hilarion Legaspi, Chief of the EPD issued a certification dated March 14, 1994 stating that the particular entry number (013570-94) was processed for a shipment STC (said to contain) personal effects consigned to M. Divine.

> Mrs. Zenaida Duque, then Chief of the Collection Division also issued a certification that as of March 14, 1994, no entry for subject shipment was filed by the broker/consignee.

19. While the advance deposit of P1,863,598.00 under O.R. No. 30277274 issued by FEBTC is authentic, the same bank certified that the purported FEBTC Check No. 30277901 (allegedly the final payment) is spurious.

20. Sometime thereafter, Schmitz denied having any knowledge about the fake entry and the fake FEBTC Check No. 30277901.

21. On March 16, 1994, Milwaukee filed Entry No. 34360-94 with the final payment covered by O.R. No. 45981887 in the amount of P5,000,000.00 dated March 16, 1994 and another O.R. No. 46051162 in the amount of P4,944,646.00 dated March 22, 1994.

Petitioner wholly disagrees with respondent's version of the events that transpired during the transfer of the subject shipment from the carrying vessel to its factory in Apalit, Pampanga, most especially on the statements of Mr. Pastoriza. Thus:

> "During the hearing of the case, Mr. Pastoriza testified to the effect that he allowed the release of the shipment because he was shown by Mr. Garcia, supervisor of Schmitz, Import Entry Declaration No. 013570-94 covering the shipment and official Receipt with number 3027701(sic) for ₱9,972,548.00 supposedly in payment of the tax and duty due.
>
> The testimony of Mr. Pastoriza is not quite believable.
>
> He acclaimed that Mr. Garcia, an employee of "Schmitz", boarded the vessel and showed him an [entry] with number 30277901 (p. 53, customs records). An examination of this document showed that the customs broker named therein is RMV Customs brokerage, not "Schmitz". How could he rely on an entry of one broker submitted by an employee of another broker. "Schmitz" is the official broker of Milwaukee as can be seen on the Import Entry Declaration (Exh. "1"), not RVM. For Mr. Pastoriza to rely on such entry under such circumstances is unbelievable.
>
> Again, Mr. Pastoriza claims that the original of Entry No. 3027790 (sic) was shown to him by Mr. Garcia which entry was duly perforated to show that the same has been filed and accepted by the Entry Processing Division of the Port of Manila. This is highly unbelievable because once an entry has been filed and accepted by the Bureau and duly perforated, no other person except official customs personnel can have possession of the same. If what Mr. Pastoriza says is true, then upon presentation to him of the original copy of the entry, he should known that something was wrong because Mr. Garcia is not an official employee of the Bureau of Customs authorized to carry said entry. He should have reported the matter immediately to his superior and recommended the investigation of Mr. Garcia for

having in his possession official customs documents for which he had no authority to possess. This Pastoriza did not do.

Mr. Pastoriza testified that he released the shipment upon presentation to him of the entry and receipts. This is highly irregular and cast doubts as the credibility of Mr. Pastoriza. Release of shipments in the Bureau of Customs Is not based on the entry or receipt/s. Such release is based on a "Permit to Deliver Imported Goods" (PDIG) duly processed by the Cash Division of the port after verifying the fact of payment of tax and duty due and officially transmitted to the Piers and Inspection Division by official messenger/s of the Cash Division. A release of Imported cargo cannot be effected by a mere Entry nor unverified receipt. On this point, Mr. Pastoriza is not telling the truth.

Furthermore, a Boat Note is not an authority to release imported cargo. It is an authority to transfer goods from one place to another under the condition/s stated therein. The Boat Notes covering the subject shipment which Mr. Pastoriza admitted preparing and issuing clearly specify the conditions of the issuance of the Boat Notes, I.e.

> "Shipside discharge into lighter under guard." Guard to remain in duty until release by Customs Proper Authority or upon presentation of a valid delivery Permit or PDIG".

The subject shipment has not yet been released by "Proper Customs Authority" nor covered by a Permit to Deliver Imported Goods. In fact, even with the authorization of the "Proper Customs Authority", release cannot be effected without a valid Permit to Deliver Imported Goods. It is the PDIG that extinguished the life and validity of a Boat Note. Not any other document.

On the other hand, the testimonies of Messrs. Garcia and Aro are quite clear.

Mr. Garcia testified that he boarded the carrying vessel to present to the Customs Inspector the Shipside Permit (Exh. "B" TSN p. 29, May 31, 1994.). Thereafter he secured the barges on which one cargo will be discharged (Exh. "B" TSN, supra). He never showed Mr. Pastoriza any entry or receipt. He only witnessed the number of billets discharged to each lighter and signed the corresponding Boat Note covering such discharge.

Mr. Aro testified that he made representations with Mr. Pastoriza about the possibility of transferring the cargo to Milwaukee's premises without the payment of duty and tax due. Mr. Pastoriza told him this could be done provided the same was underguarded. Mr. Aro agreed to the arrangement and in fact the shipment was so transferred and the guards paid partially their overtime fees (Exh. "B" TSN pp. 15, 16 & 17; Exh. "P", "O" and "O-1").

The testimonies of Messrs. Garcia and Aro were never rebutted nor controverted.

Between the two testimonies, that of Mr. Pastoriza and those of Messrs. Garcia and Aro, the latter's are more credible. Hence, the inescapable conclusion is that the subject shipment was not yet released to Milwaukee at that time but only transferred under guard by authority of several valid Boat Notes Issued by Customs Inspector Pastoriza.

Further, it is noted that while the Bureau of Customs relied on the testimony of Mr. Pastoriza in justifying the claim that the shipment were already released by him which was the basis of the decision for forfeiture, the same Bureau filed a criminal charge against the same Jaime Pastoriza impugning the credibility of his testimony in the Seizure and Forfeiture proceeding.

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Further, it may be stated that nowhere in the record is it shown the Milwaukee ever had a hand in the transfer of the shipment to its

> premises. It was done by the broker. If there is anything irregular in the transfer, and this is not admitted, Milwaukee has no participation on the same nor is privy thereto.
>
> A customs broker is an agent of the importer to effect the release of cargoes from the Bureau of Customs. As such agent, the customs broker is governed by the laws of agency and if such broker commits any act/s outside of the scope of the agency or any other illegal act/s, the same does not find the principal. (Memorandum for the Petitioner, pp. 4-7)

Penultimately, petitioner capitalizes on the legal effect of its filing of entry and the acceptance of payment on the taxes and duty due on the subject shipment. It asseverates, thus:

> It has been established that the Bureau of Customs, on March 17, 1994, prior to the return of the Warrant of Seizure and Detention, allowed the filing of the entry and accepted the payment of the tax and duty due on the subject shipments.
>
> Section 1202 of the Tariff and Customs Code provides when importation begins and when deemed terminated, and we quote.
>
> > Sec. 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 and 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.
>
> It is clear from said provision that when the duty, taxes and other charge due upon the articles are paid, the Importation is deemed terminated. In the Instant case the tax and duty due were already paid as shown by BCOR No. 45981887 (Exh. "H") and BCOR No. 4605112 (Exh. "I") in the total amount of P9,944,864.00. It was the Commissioner of Customs himself who directed the allowance of the filing and further processing of the entry and to release the shipment upon payment of the tax and duty (Exh. "M"). No other charge was due. With said payment, the importation is deemed terminated and if there was any Irregularity in the process, such sustain of Irregularity has been erased.
>
> In this connection it may be well to mention that Section 3601 of the Tariff and Customs Code, as amended, dealing with penal provision for violation of customs law, it is specifically provided that "x x x the payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this Section". A similar provision is not provided for in Section 2530 regarding "Property Subject to Forfeiture Under the Tariff and Customs Law". Since such provision is not so included in so far as forfeiture is concerned, then it is excluded. This is in line with the accepted and wise Latin maxim "Inclusio unius, exclusio alterious". What is included is included and what is excluded is excluded. Since the provision on Section 3601 is not present in Section 2530, then such provision is excluded. The legal conclusion is that payment of tax and duty due is a valid defense in Seizure and Forfeiture proceedings. (Memorandum of Petitioner, pp. 7-8, pp. 669-670, CTA records)

Lastly, petitioner rebuts respondent's application of the case of **Collector of Customs v. Torres, 45 SCRA 270**, to support its contention that payment of duties and taxes does not prejudice the continuance of the seizure preceding. Thus:

> "x x x the facts, in the cited case of Collector v. Torres (supra) are very different from the facts obtaining in the instant case. In the Torres case, a shipment has been released in the Bureau of Customs after the filing of the entry, the examination of the cargo and the collection and payment of P10,887.50. Upon interception, the cargo was found to be misdeclared and undervalued, hence seized. The consignee argues that because he has paid P10,887.00 for customs duties and taxes, the Collector has no authority to seize the cargo and subject it to forfeiture proceedings. The issue here is the jurisdiction of the Collector of Customs and in passing the court stated:
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> > "Payment of an amount for customs duties, taxes, etc. does not necessarily terminated the importation and make the release of the imported goods regular. Importation is deemed terminated only 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". (underscoring supplied)
>
> The operative phrase in the decision is the "full payment of duties, taxes and other charges x x x". In the Torres case, the full duties and taxes were not paid. In fact the shipment was found to be undervalued and misdeclared. In the instant case the full duty, taxes and other charges as found by the Bureau of Customs had been paid. Upon payment and acceptance of the duty and tax due on the shipment, the permit for the withdrawal of the cargo follows as a matter of course because the government does not have any lien over the same anymore. In fact, the direction on the note of Atty. Redubla specifically states "x x x to

> release upon payment of T/D", T/D meaning tax and duty due.
>
> Clearly, therefore, the payment and acceptance of the taxes and duty due on the shipment which made upon instruction of the Commissioner terminated the importation. (Memorandum of Petitioner, pp. 8-9; pp. 670-671, CTA records)

The issues presented by the parties, and as found by this Court, are the following:

a) Whether or not the payment of the taxes and duties due on the subject importation by petitioner on March 17, 1994 per notation of Atty. Aaron Redubla constitutes a valid payment with no conditions attached;

b) Whether there was a final release or only a transfer under continuous customs guarding of the subject shipment upon the delivery of the same to petitioner's premises.

Anent the first issue, We rule in favor of the petitioner.

It is the basic position of the respondent that the acceptance of the duties and taxes from the petitioner on March 17, 1994 was "only conditional and no final release of the shipment was granted" and that, "[h]is decision was based on his power of supervision and control over customs revenue to avert further losses to the government as the shipment was no longer within customs premises and already partially consumed". (Answer, p. 7, supra)

Respondent is obviously prevaricating on this aspect of the issue. A cursory reading of the letter of Mr.

Alfredo S. Gloria to the respondent, dated March 16, 1994, inclusive of the notations thereon (Exhibits "M", "M-1" and "M-2") failed to show any express or implied wording or intimation whatsoever on the supposed conditional acceptance of the payment. What can be considered as conditional is the indicated requirement in the note of Atty. Aaron Redubla for a prior payment of the taxes and duties before any release of the subject shipment can be effected. But as to conditional acceptance of the payment itself, the same is absent and cannot be fathomed from the wordings of the document. Indeed, as correctly interposed by the petitioner, "[t]here was nothing conditional about the directive" (Petition, p. 6, supra).

The defense of the respondent that the case of **Collector of Customs v. Torres (45 SCRA 270,** supra) supports its contention that payment of taxes and duties does not prejudice the continuance of the seizure proceeding in order to justify its conditional acceptance of the payment, is misleading. We agree with the petitioner that the operative phrase in the cited decision is the "full payment of duties, taxes and other charges" (underscoring supplied; Petition, p. 6, supra) before any importation is deemed terminated. Petitioner exactly made a full payment in the instant case. In the

Torres case, however, the consignee who are merely paid a *partial* amount of the duties and taxes due was invoking such fact of payment as a termination of the importation and a bar to forfeiture. It was in this light that the Supreme Court stated:

> Respondents' argument that the issuance of the warrant of seizure and detention was illegal, improper and arbitrary, because it was issued after the customs duties, taxes and other charges for the imported goods in the amount of P10,887.00 had been paid, and that the physical custody of the goods in question was no longer with the Collector of Customs, the same having been already deposited in a private bodega, is of no moment. Payment of an amount for customs duties, taxes, etc. 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. Hence, if 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 Tariff and Customs Code. Having been released irregularly, the goods or articles involved in the present case could be seized even outside the customs zone by the customs authorities, or by the persons deputized by the Commissioner of Customs or by the Collector of Customs - as in the case of herein petitioners PAGCOM agents whose deputation was specifically stated in the warrant of seizure and detention issued by the Collector of Customs.(**45 SCRA 284**)

Viewed from the above, the factual milieu of the Torres case and the case at bar is entirely different. Hence, the particular argument of the respondent is clearly without merit.

Pursuant to the Customs Code, the full payment made by the petitioner and the "release" order of the respondent as indicated in the notation of Atty. Aaron Redubla, taken together, can be considered as complete satisfaction of the requirements of a valid termination of the subject importation. Section 1202 of the Customs Code provides:

> SEC. 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. <u>Importation is deemed terminated upon payment of the duties, taxes</u> 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 left the jurisdiction of the customs. (Underscoring supplied)

What makes the entire issue problematic, however, is the unresolved aspect of having to deal with the effect of a seizure proceeding began prior to the acceptance of the full payment of taxes and duties from the petitioner.

Records show that respondent had prior knowledge of the issuance of warrant of seizure and detention covering subject shipment. This can be gathered from the testimony of Mr. Nicasio C. Gamboa, Chief Intelligence Officer of the Customs Intelligence and Investigation Service (CIIS) of respondent's Bureau during the hearing of May 14, 1996, to quote:

> xxx xxx xxx
>
> Q. After you have made your findings, what did you do, if any?
>
> A. We reported that to our superior. And we informed our chief. Subsequently, we prepared a memorandum and requested the issuance of the warrant of seizure against the shipment.
>
> xxx xxx xxx
>
> Q. To your knowledge, what happened subsequently after the warrant of seizure and detention was issued?
>
> A. <u>If I remember right, we have (sic) a conference with the Commissioner together with Mr. Gloria</u>. And he alleges (sic) that based on his letter, he is willing to pay the duties and taxes. And that shipment were released only purposely because they want it to be deferred payment which personally that was not allowed.
>
> (TSN, Hearing of May 14, 1996, p. 15, underscoring supplied)

In other words, Mr. Gamboa and the respondent together with Mr. Gloria, the consultant who represented petitioner and who is the signatory in the letter of March 16, 1994, had a conference on the subject shipment, after the warrant was already issued. On this point, it is not farfetch to think that herein respondent was made aware of the issuance of the warrant, especially that Mr. Gamboa had a first hand involvement in the issuance of the warrant.

Also, the citation by the respondent in his questioned decision of the case of Mayer Steel Pipe Corporation v. The Commissioner of Customs, CTA Case No. 4656, to justify the "conditional" acceptance of the duties and taxes and the absence of final release of the shipment as having been granted by him (Decision of the respondent, p. 5, p. 520, Customs records), is an indirect admission of the fact that he had prior knowledge of the seizure proceeding instituted against the petitioner before he accepted the payment. This is so because said case pertains to the order of this Court then to the respondent to accept the payment of duties and taxes being offered by the petitioner therein without prejudice to the continuance of latter's appeal on the finding of forfeiture by the respondent. In short, the Mayer case dealt on the payment of taxes and duties on goods already seized and forfeited by the respondent. Applying thus said case parallel to the instant case, respondent is seen as having been aware of the warrant issued against petitioner at the time he accepted payment.

Prescindingly, in so far as this Court is concerned, the application of the Mayer case to the case at bar is untenable. A review of the facts prevailing therein that led this Court to order the payment of the taxes and duties without prejudice to the continuance of the appeal proceeding was made possible through the agreement of the petitioner to pay said taxes and duties. It was not by virtue of any law or jurisprudence ordering payment but rather by the initiatives of the parties themselves.

In the light of the foregoing circumstances, with our finding that respondent had prior knowledge of the issuance of the warrant of seizure and detention against petitioner before he accepted the payment and ordered the release of the subject shipment, this Court arrives at the conclusion that what respondent did in the instant case is simply an exercise of his power to compromise any case under the Customs Code or other laws or part of laws enforced by his Bureau involving forfeiture. Section 2316 provides:

> **SEC. 2316.** ***Authority of Commissioner to Make Compromise.*** - Subject to the approval of the Minister of Finance, the Commissioner of Customs may compromise any case arising under

> this Code or other laws or part of laws enforced by the Bureau of Customs involving the imposition of fines, surcharges and forfeiture unless otherwise specified by law. (Underscoring supplied)

It is not amiss to point out that the issuance of seizure and detention is a step preliminary to forfeiture. Thus, it is deemed a part of the process involving forfeiture.

In accepting the payment of the taxes and duties due on the subject shipment despite a standing warrant of seizure and detention, respondent can only be interpreted as having agreed to the compromise offered by the petitioner, that is: of having a split payment or deferment of payment of taxes and duties as it was then encountering financial problems. As stated in the letter of the petitioner, dated March 16, 1994 (Exhibit "M"), to wit:

> March 16, 1994
>
> COMMISSIONER C. PARAYNO
> Bureau of Customs
> M a n i l a
>
> Subject: Shipment of 11,985 Pieces stc: 9,217.344 MT Secondary Steel Billets per s/s Solsyn under Bull of Lading No. 1 which arrived on 2-01-94 and consigned to Milwaukee Industries Corporation.

Dear Sir:

Thank you very much for receiving and listening to our explanation regarding the above shipment. Attached with this entry forms are two checks amounting to P5,000,000.00 dated today and P4,944,864.00 dated March 22, 1994.

Frankly, we have to ask your consideration for having a split payment as we are presently encountering financial problems. While it is true that about 3,000 Metric Tons have been minted, nothing has gone yet to the market.

Once again, we would like to reiterate that our only intention is to defer the payment of duties and taxes and not to defraud the government.

Thank you.

Very truly yours,

MILWAUKEE INDUSTRIES CORP.

By:

(Sgd.) ALFREDO S. GLORIA
Consultant

It must be observed that petitioner did not hide the fact of having minted 3,000 metric tons of the subject shipment of steel billets. It also averred that it had no intention of defrauding the government. Verily, respondent is not naive so as not to understand the underlying import of petitioner's statements. Petitioner has virtually admitted that the subject shipment is in its factory compound with its statement that 3,000 metric tons of said shipment have already been minted as of that date. Also, its statement that it has no intention "to defraud the government", when coupled with the fact that a warrant has been issued is a clear signal that something was wrong, afoot or irregular about the importation. Despite everything, however, respondent directed the processing and acceptance of the payment of taxes and duties and ordered the release of the subject shipment. Undeniably, respondent accepted the offer of compromise by the petitioner.

Consequently, We Find the argument of the respondent in his memorandum (p. 6; p. 683, CTA records) that Atty. Aaron Redubla "is not the Commissioner of Customs" and "has no authority to compromise seizure cases" in accordance with said Section 2316 of the Customs Code as baseless and contradictory to his questioned decision and the allegations in his answer in this case. It must be recalled that respondent did not object to the acceptance of the payment of taxes and duties but only that he alleged the same to be a conditional acceptance. We have ruled above that there was nothing conditional about the acceptance. Implied therefrom, thus, is the act of the respondent of having compromised the seizure case involved herein.

This Court views the above conclusion it has arrived at to be in accord with the interest of justice and fair play. If We are going to sanction the actions taken by the respondent, that is of having to accept full payment of the taxes and duties due on the subject shipment while concommitantly instituting a seizure and forfeiture case on the same shipment, We believe that a travesty of justice would be inflicted against the person of the petitioner. The Customs Code imposes forfeiture of goods in cases of illegal importation but never does it allow the receipt of payment of taxes and duties on top of the forfeited goods. An illegal importation subject of forfeiture cannot simply be the basis of a valid payment of taxes and duties. And yet, this is what the respondent did in the instant case. Knowing fully well that a warrant of seizure and detention has been issued on the subject shipment of the petitioner, respondent still accepted full payment of taxes and duties over the same. Due process demands therefore that the act of the respondent in accepting the payment be considered as an act of compromise.

Moreover, respondent is estopped from forfeiting the subject shipment because he had already priorly accepted the full payment of the taxes and duties due thereon. While the government is never estopped by mistake or error on the part of its agents, it has been held, however, that " the doctrine of estoppel may be asserted against the government when it or its agents, acting within the scope of their authority have been guilty of acts amounting to fraud and acted in good faith by others to their detriment." (U.S. v. Standard Oil Co. of California, 20 F. Supp. 427 as cited in Evidence, 3rd Edition [1996], p. 410 by R.J. Francisco) Respondent's acceptance of the payment is tantamount to fraud and to the detriment of the petitioner when he equally forfeited the subject shipment. Petitioner has relied on the representation of the respondent that subject shipment will be released upon payment of taxes and duties. There were no other conditions. In such regard, respondent is estopped from saying that the acceptance of the payment was without prejudice to the seizure proceeding.

On the second issue, We find a discussion of the same to be moot and academic on account of our finding above that there was a valid and unconditional full payment of taxes and duties on the subject shipment resulting and tantamount to the acceptance by the respondent of the compromise offer made by the petitioner.

Be that as it may, however, this Court takes the pleasure to dwell further on the matter for the sake of legal clarity.

A painstaking scrutiny of the records of the forfeiture proceeding *a quo* would reveal that the questioned decision of the respondent mainly augured its conclusion based on the testimony of Mr. Pastoriza that Mr. Jose Garcia presented to him a copy of Entry No. 013570-94 which he compared with the original thereof together with a xerox copy of the official receipt with number 30277901 purportedly covering the final payment of ₱9,972,548.00 on the subject shipment (Testimony of Mr. Pastoriza, T.S.N. pp. 8-12, April 14, 1994; pp. 336-340, Customs records - S.I. 94-055) and allegedly on the basis of the just mentioned receipt, he released the subject shipment (ibid., pp. 8-9, April 19, 1994; pp. 361-362, Customs records - S.I. 94-055). On account of such statements, respondent was able to establish his finding of fraud after confirming that the entry and receipt presented by Mr. Garcia turned out to be spurious documents.

On its part, petitioner claims that the subject shipment had not been released yet from customs custody; that Mr. Garcia only presented the Shipside Permit and signed the Boat Notes and nothing more; and that the subject shipment was transferred to its premises in Apalit, Pampanga under "continuous guarding".

After a more thorough weighing of the evidence of the parties, We are inclined to believe petitioner's side of the story.

Mr. Pastoriza's declarations are full of inconsistencies. A close reading of the majority of the Boat Notes would show that on their "remarks" column the words and numbers "Entry No. 013570" have been duly typewritten thereon and that on the lower right portion of said Boat Notes, the following note appears, to wit:

NOTE:

> Shipside discharge unto lighter underguard. Guard to remain in continuous duty until released by Customs Proper Authorities or upon presentation of a Valid Delivery Permit or PDIG.

Mr. Pastoriza claims that he ordered the release of the subject shipment upon presentation of the entry and receipt by Mr. Garcia. How come then that despite the alleged presentation of the entry and receipt coupled with the fact that the entry has been typewritten on the face of the Boat Notes, another note was typewritten on said Boat Notes stating to the effect that the subject shipment can only be released by "Customs Proper Authorities or upon presentation of a Valid Delivery Permit or PDIG"? If the entry was sufficient in form and substance as a basis to release the subject shipment, then the note was no longer necessary. It must be observed also that an entry is not one among the means of effecting release. The note only allows release "by Customs Proper Authorities or upon presentation of a Valid Delivery Permit or PDIG" and nothing more. Obviously, Mr. Pastoriza is not telling the truth. His frail testimony cannot prevail over the Boat Notes which constitute real evidence.

In addition, Mr. Pastoriza's reliance on the xerox copy of the entry and the receipt runs counter to his official duty of making sure that the release is effected by the delivery to him by official messenger of a "Permit to Deliver Imported Goods" (PDIG). As correctly stated by the petitioner in his memorandum, supra, "a release of imported cargo cannot be effected by a mere Entry nor unverified receipt." On this score, Mr. Pastoriza's action is not in accord with the normal course of human conduct and should thus be given little probative value.

On the other hand, petitioner's allegations are more credible. It is not disputed that sometime after the second day of discharging, Mr. Noel Aro of Schmitz had lunch with Messrs. Pastoriza and Almendras; that Mr. Aro made representation to tow the barge and effect delivery under deferred payment to the petitioner allegedly because the latter was having financial difficulty; and that Mr. Pastoriza said that the latter proposal can be done provided the shipment is "underguarded". (Testimony of Mr. Noel Aro, TSN pp. 15-16, May 31, 1994 - S.I. No. 94-055 as stated in the Facts of the Case of respondent's memorandum, p. 3; p. 680, CTA records)

The allegation of the petitioner that there was continuous guarding of the subject shipment are further buttressed by the copy of a statement of bills covering payment of the subject shipment as submitted by Customs Guard In-Charge Oscar Almendras and certified to by Customs Inspector Jimmy Pastoriza in the amount of P268,400.00 (Exhibit "N"); the xerox copy of Solidbank Check No. 08275 in the amount of P170,000.00 issued to Mr. Oscar Almendras (Exhibit "O"); the dorsal part of Exhibit "O" showing the encashment and receipt of the amount of the check (Exhibit "O-1"); and the letter of petitioner to the respondent dated March 16, 1994, more particularly the portion which tells on the financial problems it was encountering at the time (Exhibit "M").

Except for Exhibit "M", respondent objected to the existence and to the purpose of the abovecited exhibits. This Court, however, takes the opposite view. Examined together, the exhibits are all corroborative in establishing the fact that a continuous guarding of the subject shipment was what actually happened in the instant case as a result of the conference made by Mr. Aro with Mr. Pastoriza sometime after the second day of the discharge of said shipment.

Although all of the guards presented during the hearing of this case below have denied charging overtime fees and of having guarded the subject shipment, except for Mr. Lucas Almendras and Mr. Generoso Miralло who both guarded said shipment on board the carrying vessel only (TSN, Hearing of March 28, 1994,pp. 288 to 313, Customs records), We give credence to the statement of bills covering payment of overtime service duly submitted in evidence by the petitioner. The statement is signed by a certain Mr. Oscar Almendras and certified by Mr. Pastorlza. It is worthy to note that not anyone of the guards presented during the seizure proceeding has the name of Mr. Oscar Almendras. Obviously, thus, the guards' denial was quite expected. It is not correct, however, for the respondent to say that the statement has been controverted by virtue thereof. The testimonies of the guards are irrelevant and Immaterial If their purpose is to impugn the genuineness of the statement because it is not the signature of any of the guards that Is involved but rather the signature of Mr. Oscar Almendras. If ever, the very person of Mr. Oscar Almendras should have denied the statement or a certification of respondent's Bureau to the effect that no such person with the name of Mr. Oscar Almendras appears on the record as a customs guard should have been submitted, in order that the authenticity of the document would have been validly impugned. As it is, the statement remains unrebutted.

Also, respondent has failed to object specifically to the mentioned certification of Mr. Pastoriza in the statement.(Comments/Objections of respondent, p. 195, CTA records) A reference of the signature of Mr. Pastoriza in the certification with his specimen of signatures appearing in the Boat Notes, supra, convinces Us that they are one and the same.

As to the Solibank check, it is a strong evidence supporting the existence of the statement. The respondent failed to show that the check was not in partial payment of overtime service as claimed by the petitioner in its formal offer. Respondent merely objected to the check on the ground that the facts, according to him, show that no conduction guard was assigned on the subject shipment to petitioner's premises. Hence, no overtime charges are expected. Respondent did not specifically assail the authenticity and purpose of the check itself. He failed to say that the check was utilized for payments other than the payment of overtime service or to state that the check was spurious. Thus, the check has a probative value for the purpose it was offered.

Finally, the letter of the petitioner, dated March 16, 1994, addressed to the respondent speaks of the actual financial difficulty petitioner was experiencing at the time. Without doubt, this confirms the representation made by the petitioner to Mr. Pastoriza during the discharging of the subject shipment.

In fine, this Court finds the version of the petitioner as more credible and trustworthy. The testimony and documentary proofs adduced in evidence for the petitioner are well-nigh convincing and corroborative of each other, so that when taken as a whole they clearly demonstrate petitioner's honest assertions. Therefore, granting for purposes of argument that there was no valid compromise, the above facts show that neither was there any valid ground for the respondent to forfeit the articles in question. The payments are considered valid for all legal purpose and satisfies the requirement of the law.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. The assailed decision of the respondent in Customs Case No. 94-09 (Manila Seizure Identification No. 94-055) is hereby

REVERSED and **SET ASIDE**. Accordingly, the Surety Bond (PGA Bond No. HQ 34515-95/G[16] No. 17997 as amended under Endoresement No. HQ-E-09398-96 in the total amount of P75,000,000.00) posted by the petitioner is ordered **CANCELLED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals