REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CUSTOMS,
Petitioner,
-versus-

CHEVRON PHILIPPINES INC.
[Formerly: Caltex (Philippines) Inc.],
Respondent.

C.T.A. EB No. 121
(C.T.A. Case No. 6358)

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CHEVRON PHILIPPINES INC.
[Formerly: Caltex (Philippines) Inc.],
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. EB No. 122
(C.T.A. Case No. 6358)

Present:

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

Promulgated:
MAR 0 1 2007

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

As held by the Supreme Court, "*what is due process of law depends on circumstances. It varies with the subject matter and the necessities of the* *situation. Thus, summary proceedings suffice for taxes and executive decisions for exclusion from the country".*[1] Corollary thereto, there are decided cases in which actual knowledge of the circumstances satisfied the element of notice in procedural due process in the same way that herein respondent's actual knowledge of the arrival of its shipments of imported crude oil constitutes "due notice" thereof.

STATEMENT OF THE CASE

Before this Court are two Petitions for Review pursuant to Section 18 of Republic Act No. 1125 as amended by Section 11 of Republic Act No. 9282. The first petition docketed as C.T.A. EB No. 121 filed by the Commissioner of Customs seeks the reversal of the Decision dated April 5, 2005 and the Resolution dated September 9, 2005 of the First Division of this Court (the Court in Division) in C.T.A. CASE No. 6358 captioned *Caltex Philippines, Inc. vs. Commissioner of the Bureau of Customs.* On the other hand, the second petition docketed as C.T.A. EB No. 122 was filed by Caltex Philippines, Inc. which likewise seeks the reversal of the very same Decision and Resolution of the Court in Division which ordered Caltex Philippines, Inc. to pay the Commissioner of the Bureau of Customs the amount of 105,899,569.05 representing deficiency customs duties plus interest. Since both Petitions for Review involve the same parties and subject matter, this Court deemed it necessary to consolidate the aforementioned petitions.

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1 *Forbes, et al., vs. Tiaco, et al.,* G.R. No. 6157, July 30, 1910 (16 Phil 534).

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STATEMENT OF THE FACTS

The undisputed facts as found by the Court in Division are as follows:

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

PRODUCT	ARRIVAL DATE	VESSEL
66,229,960 ltrs Nan Hai Crude Oil	3/8/1996	Ex MT Bona Spray
6,990,712 lrts Reformate	3/18/1996	Ex MT Orient Tiger
16,651,177 ltrs. FCCU Feed Stock	3/21/1996	Ex MT Probo Boaning
236,317,862 ltrs. Oman/Dubai Crude Oil	3/26/1996	Ex MT Violet
51,878,114 lrts Arab Crude Oil	4/10/1996	Ex MT Crown Jewel

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

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

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

IED No.	Date Filed	Total Dutiable Value Paid	IEIRD No.	Date Filed	Total Dutiable Value Paid	BOC O.R. No.
15361656	4/10/1996	Import Duty P2,496,305.00 Special Duty 856,438.00 Total P3,352,743.00	818-96	6/21/1996	Import Duty P4,066,063.00 Special Duty 8,708,709.00 Total P4,642,646.00	36757761
15361577	3/12/1996	Import Duty P13,252,306.00 Special Duty 18,994,537.00 Total P32,246,843.00	606-96	5/10/1996	Import Duty P6,253,833.00 Special Duty 8,817,797.00 Total P2,563,964.00	36757305
15361595	3/26/1996	Import Duty P3,577,072.00 Special Duty 14,216,573.00 Total P17,793,645.00	605-96	5/10/1996		

15361604	3/26/1996	Import Duty P1,735,044.00 Special Duty 6,264,288.00 Total P7,999,332.00	604-96	5/10/1996
15361622	3/28/1996	Import Duty P29,530,362.00 Special Duty 135,251,799.00 Total P164,782,161.00	603-96	5/10/1996
15361622	3/28/1996	(Computed with IEIRD No. 603-96)	601-96	5/10/1996
15361631	3/28/1996	Import Duty P14,895,395.00 Special Duty 68,222,292.00 Total P83,117,687.00	600-96	5/10/1996
15361631	3/28/1996	(Computed with IEIRD No. 600-96)	602-96	5/10/1996

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

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

Meanwhile, or on August 1, 2000, petitioner received from the District Collector of the Port of Batangas a Demand Letter requiring the immediate settlement of the amount of SEVENTY THREE MILLION FIVE HUNDRED THIRTY FIVE THOUSAND AND EIGHT HUNDRED THIRTY PESOS (₱73,535,830.00) representing the total dutiable value due from the importations made. In response, petitioner sent a letter informing the District Collector of the Port of Batangas of the pending request for the creation of a unified team to exclusively handle the investigation. Further, petitioner expressed its objection to the demand for payment of the dutiable value using 10% duty rate and raised the defense of prescription against the assessment pursuant to Section 1603 of the Tariff and Customs Code. Also, petitioner submitted that the 3% tariff rate should be applied in computing the customs duties. Thus, it requested that the assessment for deficiency customs duties be cancelled and the Notice of Demand be withdrawn.

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

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

> There is no dispute that the 8 Import Entries covering the 5 shipments of Caltex was filed by the importer and accepted by the Customs officials of the Port of Batangas far beyond the 30 days non-extendible period mandated by Law.
>
> Caltex declared the shipments at 3% rate of duties pursuant to R.A. 8180 which took effect on 16 April 1996. The officials of the Port of Batangas accepted the declared rate and collected the duties due therefrom.
>
> Prior to the effectivity of R.A. 8180 the rate of duty for oil shipment was 10%.
>
> xxx xxx xxx
>
> In all the above instances, the filing and acceptance of the questioned 8 Import Entries of Caltex and 1 Import Entry of Shell was authorized by then District Collector Luciano Morabe. xxx
>
> While it is equally important to discuss the merit of the 7% deficiency in duty (that is, 10% less 3%) due on the questioned shipments of Caltex and Shell, yet the matter is deemed peripheral to the major issues in this case, namely:
>
> FIRST, WHETHER THE ACTION OF THE DISTRICT COLLECTOR IN ALLOWING THE FILING AND ACCEPTANCE OF THE IMPORT ENTRIES FOR THE SHIPMENTS WAS SANCTIONED BY LAW; AND
>
> SECOND, WHETHER THE IMPORT ENTRIES AND SETTLEMENTS OF DUTIES HAVE ALREADY BECOME FINAL AND CONCLUSIVE UPON THE BOC AND 2 OIL FIRMS.

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

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

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

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

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

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

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

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Any action to circumvent the mandate of this Section by allowing the importer to file the entry for his shipments beyond 30 days period is tantamount to giving undue benefits to a party to the prejudice of the government punishable under RA 3019, the Anti-Graft and Corrupt Practices Act, xxx

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

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On the SECOND ISSUE, whether the entry and duty settlements has *(sic)* already prescribed, the same Code says NO. xxx

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

The exception is when there is fraud or protest.

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

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

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> Obviously, the District Collector, in conspiracy with the above-named officials of Caltex and Shell acted without authority or abused his authority by giving undue benefits to the importers by allowing the processing, payment and subsequent release of the shipments to the damage and prejudice of the government who, under the law is already the owner of the shipments valued at Php 2,176,155,929.00 which was allowed to be withdrawn by the importers after paying meager amounts of duties and taxes.
>
> Since fraud is present, prescription, does not apply in this case.
>
> Based on the foregoing, the government should demand from Caltex and Shell for payment of the value of their respective importation which were considered abandoned by operation of law minus the duties and taxes paid by the companies based on the 3% rate of duty and to pursue criminal action against the District Collector and the officers of Caltex and Shell.

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

Thus, Commissioner Titus B. Villanueva sent a letter dated October 29, 2001 informing petitioner on the findings of irregularity in the filing and acceptance of the import entries beyond the period required by customs law and in the subsequent release of the shipments as the same were already considered as abandoned under the said law. Also, petitioner was directed to pay the amount of ₱1,180,170,769.21 representing the total dutiable value of the importations of crude oil made on various dates from March 8 to April 7, 1996.[2]

On November 28, 2001, Caltex Philippines, Inc. filed a Petition for Review with the First Division of the Court of Tax Appeals (the Court in Division) docketed as C.T.A. CASE No. 6358 asking for the reversal of the decision of respondent therein Commissioner of Customs.

The parties submitted two issues for resolution by the Court in Division, to wit:

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2 Assailed Decision, C.T.A. CASE No. 6358, pp. 2-8.

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

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

In a Decision promulgated on April 5, 2005, the Court in Division ruled that respondent is correct when he affirmed the findings of the Customs Intelligence & Investigation Service, Investigation & Prosecution Division on the existence of fraud, as such, prescription does not apply pursuant to Section 1603 of the Tariff and Customs Code of the Philippines (TCCP) which provides:

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

> The one-year period as provided in the above section does not apply when there is fraud. Fraud "is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another." Taxpayers devise numerous schemes to evade payment of correct taxes. As the Supreme Court declared: "the fertility of man's invention in devising new schemes of fraud is so great that the courts have declined to define it, reserving to themselves the liberty to deal with it under whatever form it may present itself." Further, "fraudulent scheme is evidenced by a series of related acts committed one after another, silently, quietly and surreptitiously." In the instant case, through a series of acts designed to perpetuate fraud, petitioner almost successfully evaded payment of correct custom duties on its

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> five importations. As fraud is present, respondent may assess and collect from petitioner deficiency customs duties.

Consequently, the majority of the members of the Court in Division ruled that petitioner is liable for deficiency customs duties pursuant to Sections 204 and 205 of the Tariff and Customs Code, thus:

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

On the issue of abandonment, the majority of the members of the Court in Division found that there was no abandonment. On the other hand, Justice Caesar A. Casanova, in his dissenting opinion, found that the subject crude oil importations were already abandoned by the petitioner pursuant to Section 1801 of the Tariff and Customs Code and ruled as follows:

> With due respect to the opinion of the majority, I beg to disagree with their opinion that petitioner Caltex Philippines Inc. has no intention to abandon the imported crude oil thus, preventing the forfeiture of the said imported articles in favor of the government.
>
> After analyzing carefully all the evidence on record, both testimonial and documentary, the undersigned found out that **the importation of crude oil made by petitioner Caltex Philippines, Inc.** which arrived on various dates from March 8, 1996 to April 10, 1996 under Import Entries No. 600-96, 601-96, 602-96, 603-96, 604-96, 605-96, 606-96 and 818-96 and marked as Exhibits "AAA", "QQ", "DDD", "PP", "GG", "X", "O", and "B" respectively, **had already been ABANDONED by operation of law** in favor of the government when petitioner Caltex filed the said Import Entries and Internal Revenue Declarations (IEIRD) beyond the thirty (30)-day period prescribed under the Tariff and Customs Code of the Philippines.

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Hereunder are the dates of arrival and the dates of filing of the IEIRD for a CLEARER VIEW:

ENTRY NO.	CARGO	DATE FILED	ARRIVAL DATE	VESSEL
600-96	OMAN CRUDE OIL	5-10-1996	3-26-1996	M/T VIOLET
601-96	DUBAI CRUDE OIL	5-10-1996	3-26-1996	M/T VIOLET
602-96	OMAN CRUDE OIL	5-10-1996	3-26-1996	M/T VIOLET
603-96	DUBAI CRUDE OIL	5-10-1996	3-26-1996	M/T VIOLET
604-96	REFORMATE	5-10-1996	3-18-1996	M/TORIENTTIGER
605-96	FCCU FEEDSTOCK	5-10-1996	3-21-1996	M/T PROBO BAONING
606-96	NAN HAI CRUDE OIL	5-10-1996	3-08-1996	M/T BONA SPRAY
818-96	ARAB CRUDE OIL	6-21-1996	4-10-1996	M/T CROWN JEWEL

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> Section 1801 is clear that, regardless of the intention of petitioner Caltex, when it failed to file the required entries it has abandoned in favor of the government the subject crude oil. The fact that petitioner Caltex applied for special permit to discharge shipments, immediately filed import entry declarations and paid tentative import and special duties and other fees to the Bureau of Customs, paid the Bureau of Customs underguarding fees from the time the shipment arrived up to the time of its release, was issued "Authorities to Release Imported Goods" by Customs authorities, and that the five shipments were directly unloaded and stored in the oil tanks owned by it, does not alter the fact that, by operation of law, the abandonment of the subject imported articles had already set in. *(Emphasis supplied)*

Caltex Philippines, Inc. filed a Motion for Reconsideration of the aforementioned Decision of the Court in Division on April 25, 2005, in addition, it filed a Supplemental Motion for Reconsideration on May 30, 2005. The Commissioner of Customs likewise filed his Motion for Partial Reconsideration by registered mail on April 25, 2005.

In a Resolution dated September 9, 2005, the Court in Division denied both Motions for Reconsideration. Justice Caesar A. Casanova has a Concurring and Dissenting opinion in which he expressed: 1) his concurrence with the denial of Caltex Philippines, Inc.'s Motion for Reconsideration, and 2)

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his dissent with respect to the majority opinion's denial of respondent Commissioner's Motion for Reconsideration.

Hence, both respondent Commissioner of Customs and petitioner Caltex Philippines, Inc. filed their respective Petitions for Review with the Court of Tax Appeals *en banc* (hereafter "this Court") on October 20, 2006 and October 21, 2005, respectively. The appeal by the Commissioner of Customs was docketed as C.T.A. EB No. 121 while Caltex Philippines, Inc.'s appeal was docketed as C.T.A. EB No. 122. In a Resolution dated September 18, 2006, this Court ordered the consolidation of C.T.A. EB No. 122 with C.T.A. EB No. 121 and submitted the consolidated petitions for decision. Considering that both parties are petitioners and respondents at the same time, they shall be referred to by their respective names throughout the rest of this Decision. Thus, the term "Commissioner" shall refer to the Commissioner of Customs and the name "Caltex" shall refer to Chevron Philippines Inc. (formerly Caltex Philippines, Inc.).

STATEMENT OF THE ISSUES

The following are the grounds relied upon by the parties in their respective Petitions for Review:

C.T.A. EB No. 121
Commissioner of Customs vs. Caltex Philippines, Inc.

1. THE HONORABLE COURT OF TAX APPEALS (FIRST DIVISION) ERRED IN HOLDING THAT THERE WAS NO ABANDONMENT OF THE SUBJECT IMPORTED CRUDE OIL DESPITE FAILURE OF THE RESPONDENT TO FILE THE CORRESPONDING IMPORT ENTRIES WITHIN THE PRESCRIBED THIRTY-DAY PERIOD.

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C.T.A. EB No. 122
Caltex Philippines, Inc. vs. Commissioner of Customs

1. THE FIRST DIVISION OF THIS HONORABLE COURT ERRED WHEN IT FOUND THAT THE IMPORT ENTRY DECLARATION (IED) CONSTITUTED THE "SPECIFIED ENTRY FORM" PROVIDED UNDER SECTION 205 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES;

2. THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN RULING THAT THE PETRON CASE DOES NOT DISTINGUISH BETWEEN IED AND THE IMPORT ENTRY AND INTERNAL REVENUE DECLARATION (IERD);

3. THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN FINDING THAT RESPONDENT COMMISSIONER'S RIGHT TO COLLECT SUPPOSED DEFICIENCY TAXES DID NOT LAPSE DESPITE THE PASSING OF THE ONE YEAR PRESCRIPTIVE PERIOD PROVIDED IN THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES;

4. THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN FINDING THAT PETITIONER IS GUILTY OF FRAUD;

5. THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN RULING THAT PETITIONER WAS REQUIRED TO SECURE A FINAL DECISION FROM RESPONDENT COMMISSIONER ALLOWING THE ASSESSMENT OF LOWER DUTIES UNDER SECTION 1408 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES; and

6. THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN TAKING COGNIZANCE OF RESPONDENT COMMISSIONER'S MOTION FOR RECONSIDERATION DATED APRIL 21, 2005 DESPITE THE LACK OF THE REQUISITE NOTICE OF HEARING.

COMMISSIONER'S ARGUMENTS IN C.T.A EB No. 121

Under the law, respondent Caltex Philippines, Inc.'s importations of crude oil should be entered at the port of entry within thirty (30) days, a period which shall not be extendible, from the date of its discharge (Section 1301, Tariff and Customs Code of the Philippines). Respondent filed the required import entries way beyond the non-extendible thirty-day period allowed by law. More importantly, the delay in the filing of said import entries

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was deliberately made by respondent, until after the implementation and effectivity of Republic Act No. 8180 otherwise known as the *Oil Deregulation Law* on April 16, 1996, in order to evade the payment of a considerable amount as taxes and duties rightfully due the government. Prior to the implementation and effectivity of R.A. 8180 on April 16, 1996, the rate of duty for oil shipments was ten percent (10%). This was later reduced by R.A. 8180 to only three percent (3%). Consequently, because of the deliberate and intentional late filing of the import entries for more than thirty (30) days after the arrival and unloading of the subject oil importations and after the effectivity of R.A. 8180, the respondent's importations were subjected to only 3% rate of duty thereby depriving the government of seven percent (7%) of the duties imposable on the subject oil importations. This constitutes tax evasion.

Furthermore, pursuant to Section 1801 of the Tariff and Customs Code of the Philippines, an importer who failed to file the import entry within the time frame provided for by law shall be deemed to have renounced all his interests and property rights therein, and the imported article shall be considered as abandoned in favor of the government. Section 1801 of the TCCP reiterates the 30-day non-extendible period provided for in Section 1301 thereof, for an importer to file the required import entry for his shipment. It underscores the effect of filing an import entry after the allotted time has prescribed, that is, the imported articles being deemed abandoned and the ownership of the imported articles being transferred from the consignee/

importer to the government which shall dispose of the same according to law. By operation of law, said crude oil had already been abandoned in favor of the government and, as such, the imported articles have ipso facto become its property. Unfortunately, the shipments of crude oil were taken and have long been disposed of by respondent, hence, the government who is now its owner, had been unreasonably prejudiced in the total amount equivalent to the dutiable value of P1,210,280,789.21 instead of the mere P105,899,569.05 representing the 7% deficiency customs duties. To hold otherwise is to allow the respondent to benefit from its own misdoing at the expense of the government and ultimately, of the public, in general.

CALTEX'S ARGUMENTS IN C.T.A. EB No. 121

On the issue of abandonment raised by the petitioner Commissioner of Customs in C.T.A. EB No. 121, respondent Caltex Philippines, Inc. (CPI) asserts the following arguments:

> Petitioner insists that CPI failed to file the "import entries" within the reglementary 30-day period. But, petitioner neglected to mention that CPI filed two sets of import entries: one, the Import Entry Declaration (IED) and two, the Import Entry and Internal Revenue Declaration (IEIRD).
>
> CPI filed its IEDs and paid advance duties equivalent to 90% of the dutiable value of the imported petroleum products within three to eight days from arrival of the goods at the Port of Batangas. On the other hand, CPI filed its IERDs on May 10 and June 21, 1996 immediately upon receipt of the original invoices and bills of lading from its foreign suppliers.
>
> Significantly, paragraph (b) of Section 1801 does not distinguish between IED or IEIRD forms issued by the Bureau of Customs (BOC), and simply requires the owner, importer, consignee or interested party to file an "entry" to negate the presumption of abandonment. It is clear, therefore, that filing of an entry is the

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operative act that conveys to the BOC the importer's intent to retain the goods and ultimately pay the necessary import duties thereon.

It is readily apparent that as official BOC forms, both the IED and IEIRD qualify as the "entry" contemplated by Section 1801 (b) of the Tariff and Customs Code.

Even assuming without conceding that the importer must file both the IEDs and IEIRDs within the 30-day prescriptive period, petitioner still erroneously argues that abandonment in the present case occurred "by operation of law". While Section 1802 of the Tariff and Customs Code provides that abandoned articles are ipso facto deemed property of the government, this provision necessarily presumes that all requirements of the law are satisfied. In this regard, it bears repeating that Section 1801 (b) explicitly requires petitioner to give the importer due notice prior to initiating abandonment proceedings. Petitioner unequivocally admits that it did not give notice to CPI that it was declaring the crude oil as abandoned goods. This lack of notice directly contravenes the guidelines under Customs Memorandum Order No. 15-94 (CMO 15-94) which provides that:

> B.2 Implied abandonment occurs when:
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> B.2.1 The owner, importer, consignee, interested party or his authorized broker / representative, after due notice, fails to file an entry within a non-extendible period of thirty (30) days from the date of discharge of last package from the carrying vessel or aircraft.
>
> xxx xxx xxx
>
> Due notice to the consignee / importer / owner / interested party shall be by means of posting a notice to file entry at the Bulletin Board seven (7) days prior to the lapse of the thirty (30) day period by the Entry Processing Division listing the consignees who/which have not filed the required import entries as of the date of the posting of the notice and notifying them of the arrival of their shipment, the name of the carrying vessel/aircraft, Voy. No. Reg. No., and the respective B/L No. / AWB No., with a warning, as shown by the attached form, entitled: "URGENT NOTICE TO FILE ENTRY" which is attached hereto as Annex A and made an integral part of this Order.

The Tariff and Customs Code and its implementing orders purposely commands petitioner to give importers due notice as a prerequisite to abandonment proceedings. Hence, any action that

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> results from this lack of notice, *i.e.* the October 29, 2001 letter of then Customs Commissioner Titus Villanueva to CPI demanding payment of P1.180 billion as the total dutiable value of the imported petroleum as well as the December 28, 2001 letter of then Customs Deputy Commissioner Gil A. Valera reiterating said demand, is null and of no effect.
>
> Verily, on the assumption that CPI erred in interpreting the term "entry" in Section 1801(b) as the IED, it was incumbent upon petitioner to notify CPI of this mistake and enable it to rectify the same. But petitioner did no such thing. On the contrary, it approved CPI's applications for ATRIGs and Special Permits to Discharge, and accepted underguarding fees with impudence only to turn around and claim implied abandonment and assess CPI the total dutiable value of the crude oil notwithstanding its lack of factual basis and accompanying documentation.

THIS COURT'S RULING

This Court shall first discuss the issue of abandonment of the shipments of imported crude oil presented by the Commissioner in C.T.A. EB No. 121 considering that the resolution thereof may preclude the need to pass upon the issues raised by Caltex in C.T.A. EB No. 122.

There is no dispute that Caltex filed the required import entries way beyond the non-extendible thirty-day (30-day) period prescribed by law. Pursuant to Section 1301 of the Tariff and Customs Code of the Philippines (TCCP), imported articles "**must be entered** in the customhouse at the port of entry **within thirty (30) days**, **which shall not be extendible**, **from date of discharge of the last package**". Section 1301 of the TCCP provides:

> **SEC. 1301. Persons Authorized to Make Import Entry.** — Imported articles must be entered in the customhouse at the port of entry **within thirty (30) days, which shall not be extendible**, **from date of discharge of the last package** from the vessel or aircraft either (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a

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> holder of the bill or (c) by a person duly empowered to act as agent or attorney-in-fact for each holder: Provided, That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: Provided, further, That such statements under oath shall constitute prima facie evidence of knowledge and consent of the importer of violation against applicable provisions of this Code when the importation is found to be unlawful. (R.A. 7651, June 04, 1993) *(Emphasis supplied)*

The aforecited provision of the TCCP makes it mandatory for all imported goods to be "entered" in the customhouse at the port of entry. Moreover, it prescribes a non-extendible thirty-day period within which the imported articles must be "entered" in the customhouse.

IT IS THE FILING AND ACCEPTANCE OF THE IMPORT ENTRY AND INTERNAL REVENUE DECLARATION (IEIRD) THAT CONSTITUTES "ENTRY" OF IMPORTED ARTICLES UNDER THE TARIFF AND CUSTOMS CODE

Caltex argues that the word *"entry"* in Section 1801 (b) of the Tariff and Customs code is a generic term, as such, it should not be taken to refer only to the Import Entry and Internal Revenue Declaration (IEIRD):

> The phrase "an entry" under Section 1801 (b) of the Tariff and Customs Code is a general term and cannot be construed to mean only the IEIRDs, as distinguished from the IEDs. To reiterate, both the IED and IEIRD are entries officially used by the BOC. CPI therefore respectfully submits that the filing of either form must be regarded as faithful compliance with the law.
>
> In contrast, Section 205 of the Tariff and Customs Code categorically uses the phrase "specified entry form" as a distinct term and qualifies that it must be "properly filed and accepted, together with any related documents required by the provisions of this Code and/or regulations to be filed with such form at the time of entry xxx". As a matter of procedure outlined in CMO 13-83, the Bureau of Customs shall process the IEIRD only if the importer attaches the IED and the Bureau of Customs Official Receipt thereto as accompanying documents. Thus, the "specified entry form" mentioned in Section 205 relates only to the IEIRD.

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The foregoing argument is bereft of merit. The law itself had defined the meaning of the technical term "entered" as used in the TCCP:

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

The operative act that would constitute "entry" of the imported articles at the port of entry is the filing and acceptance of the *"specified entry form"* together with the other documents required by law and regulations. Said filing and acceptance should be preceded by the arrival of the imported articles at the port of entry. In its Comment, respondent admits that the *"specified entry form"* mentioned in Section 205 of the TCCP refers to the IEIRD.

Caltex, however, would like to impress upon this Court that the word "entry" in paragraph (b) of Section 1801 of the TCCP connotes a different meaning, that is, it could refer to the filing of either the Import Entry Declaration (IED) or the Import Entry and Internal Revenue Declaration

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(IEIRD). This proposition is contrary to Section 205 defining the precise moment when the imported articles are deemed "entered", which Caltex had already admitted as stated above and by arguing that the ruling of the then Court of Tax Appeals in *Petron Corporation vs. Commissioner of Internal Revenue*[3] is applicable to the present controversy. In the Petron case, it was ruled that "imported articles are deemed entered upon the filing and subsequent acceptance of the consumption entries". The "consumption entries" referred to therein are the Import Entry and Internal Revenue Declaration.

The Supreme Court had already ruled in the case of *Go Ho Lim vs. The Insular Collector of Customs*[4] that the word "entry" refers to the *regular consumption entry,* thus:

> It is disputed by the parties whether the application for the special permit, Exhibit A, containing the misdeclared weight of the 800 cases of eggs, comes within the meaning of the word "entry" used in Section 1290 of the Revised Administrative Code, or said word "entry" means only the "original entry and importer's declaration". The court below reversed the decision of the Insular Collector of Customs on the ground that the provisions of Section 1290 of the Revised Administrative Code refer to the regular consumption entry and not to a provisional declaration made in an application for a special permit, as the one filed by the appellee, to remove the cases of eggs from the customshouse.
>
> This court is of the opinion that certainly the application, Exhibit A, cannot be considered as a final regular entry of the weight of the 800 cases of eggs imported by the appellee, taking into account the fact that said application sought delivery of said 800 cases of eggs "from the pier after examination", and the special permit granted, Exhibit E, provided for "delivery to be made after examination by the appraiser". All the foregoing, together with the circumstance that the appellee had to file the **regular consumption entry** which he bound himself to do, as shown by the application, Exhibit A, logically lead to

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3 C.T.A. CASE No. 5386, February 17, 1999.

4 G.R. No. 43148, January 30, 1937 (64 Phil 64).

> the conclusion that the declaration of the weight of the 800 cases of eggs made in said application, is merely a provisional entry, and as it is subject to verification by the customhouse examiner, it cannot be considered fraudulent for the purpose of imposing a surcharge on customs duties upon the importer. *(Emphasis supplied)*

In a much later case[5], the Supreme Court ruled that the term "entry" in Customs law has a triple meaning. It means (1) the documents filed at the Customs house; (2) the submission and acceptance of the documents; and (3) the procedure of passing goods through the Customs house.

Therefore, the word "entry" could refer either to the documents filed at the Customs house or the procedure of passing the goods through the Customs house. **In either case, in order to constitute "entry" the documents have to be filed in or the procedure done through the Customs house.** This is in consonance with Section 205 of the TCCP which categorically provides that the imported articles shall be deemed "entered" in the Philippines for consumption when the specified entry form is properly filed and accepted, xxx xxx xxx **at the port or station by the customs official designated to receive such entry papers** xxx xxx xxx. Consequently, the imported articles are deemed "entered" only upon filing and acceptance of the Import Entry and Internal Revenue Declaration (IEIRD) at the Customs house of the port concerned. To reiterate, the IED is not the "specified entry form" referred to in Section 205 in relation to Section 1301 of the TCCP.

Applying the foregoing to the consolidated petitions before us, Caltex's argument that the word "entry" in Section 1801 (b) of the TCCP refers to the

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5 *Rodriguez, et al. vs. The Hon. Court of Appeals, et al.*, G.R. No. 115218, September 18, 1995 (248 SCRA 288).

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filing of the Import Entry Declaration (IED) must perforce fail. Per its own declaration, the IED is filed with the Authorized Agent Bank (AAB), on the other hand, the IEIRD is filed with the Bureau of Customs of the Port concerned.[6] Clearly, as between the IED filed with the AAB and the IEIRD filed with the BOC, it is the filing and acceptance of the IEIRD that constitutes "entry" under the TCCP.

It is not disputed that Caltex filed its IEIRDs only on May 10, 1996 and June 21, 1996 for the shipments of crude oil that arrived on March 9, 18, 21, 26, and April 10, 1996. Clearly, the IEIRDs were filed beyond the non-extendible period of thirty (30) days from the discharge of the last package from the carrying vessel. Therefore, the shipments of imported crude oil were not "entered" in accordance with the mandatory provision of Section 1301 in relation to Section 205 of the TCCP.

IMPORTED ARTICLES NOT "ENTERED" WITHIN THE NON-EXTENDIBLE PERIOD OF THIRTY DAYS ARE DEEMED ABANDONED

Caltex argues that "the sole reason for the delayed filing of the IEIRDs was due to the late arrival of the originals of the documents which were required by the BOC to be submitted so that the examiners could verify the details of the shipments as indicated by the importer in the IEDs."[7] Concomitant with the foregoing argument is an admission that the IEIRDs were indeed filed after the expiration of thirty-day non-extendible period

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6 Petition for Review, C.T.A. EB No. 122, pp. 25 -33.
7 *Id.*, p. 54.

within which the imported articles must be "entered" pursuant to Section 1301 of the TCCP, quoted hereunder:

> "Sec. 1301. *Persons Authorized to Make Import Entry.* — Imported articles must be **entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible,** from the date of discharge of the last package from the vessel or aircraft either (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a holder of the bill or (c) by a person duly empowered to act as agent or attorney-in-fact for each holder: Provided, That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: Provided, further, That such statements under oath shall constitute prima facie evidence of knowledge and consent of the importer of violations against applicable provisions of this Code when the importation is found to be unlawful (R.A. 7651, June 04, 1993)." *(Emphasis supplied)*

In fact, the Court in Division found that the reason given by Caltex for the delayed filing of the IEIRDs as unworthy of belief. The Court in Division ruled as follows:

> As an importer, petitioner knows that it must file its final entries within the non-extendible period of thirty (30) days from dates of discharge of the eight shipments. However, petitioner was able to file the final entries on the shipments beyond the allowable period. To be exact, 63, 53, 50, 45 and 72 days had lapsed before petitioner filed its import entry and internal revenue declarations ("IEIRDs") for the shipments which arrived on March 8, 18, 21 & 26 and April 10, 1996, respectively.
>
> The Court finds petitioner's explanation in its delay to file final entries untruthful and incredulous. The invoices and bills of lading were issued immediately after crude oils were loaded into the shipping vessel. The records show that the bills of lading and corresponding invoices covering the shipments were executed immediately after the crude oil were loaded into the vessel, thus:

IEIRD No.	Date of Bill of Lading	Date of Invoice
606-96	03/07/1996	03/15/1996
605-96	03/16/1996	03/27/1996
604-96	03/14/1996	03/31/1996

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602-96	03/10/1996	03/29/1996
601-96	03/07/1996	03/29/1996
600-96	03/10/1996	03/29/1996

> Petitioner, therefore, has no reason to file the said entries beyond the 30-day period. As previously mentioned, it even made an undertaking that it shall file its final entries "within the prescribed period as provided for."[8]

The non-extendible period of thirty (30) days within which all imported articles shall be "entered" is reiterated in Section 1801 of the same code. Moreover, Sections 1801 and 1802 provide for the effects of failure to comply with the mandatory requirement imposed by Section 1301 that imported articles must be entered within a non-extendible period of thirty (30) days, thus:

> SEC. 1801. *Abandonment, Kinds and Effect of.* — An imported article is deemed abandoned under any of the following circumstances:
>
> a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or
>
> b. When the owner, importer, consignee or interested party after due notice, **fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft**, or having filed such entry, fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date of posting of the notice to claim such importation.
>
> **Any person who abandons an article** or who fails to claim his importation as provided for in the preceding paragraph **shall be deemed to have renounced all his interests and property rights therein** (R.A. 7651, June 04, 1993). *(Emphasis supplied)*
>
> SEC. 1802. *Abandonment of Imported Articles.* – **An abandoned article shall *ipso facto* be deemed the property of the Government** and shall be disposed of in accordance with the provisions of this Code.

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8 Assailed Decision, pp.16-17.

> Nothing in this section shall be construed as relieving the owner or importer from any criminal liability which may arise from any violation of law committed in connection with the importation of the abandoned article.
>
> Any official or employee of the Bureau of Customs or of other government agencies who, having knowledge of the existence of an abandoned article or having control or custody of such abandoned article, fails to report to the Collector within twenty-four (24) hours from the time the article is deemed abandoned, shall be punished with the penalties prescribed in Paragraph 1, Section 3604 of this Code (R.A. 7651, June 04, 1993). *(Emphasis supplied)*

Based on the foregoing provisions of the TCCP, failure to file an entry within the non-extendible period of thirty days prescribed by Section 1301 results to implied abandonment of the imported articles which shall *ipso facto* be deemed the property of the government.

The Commissioner avers that the importations of crude oil made by Caltex have already been abandoned by operation of law even before Caltex filed the subject IEIRDs beyond the prescribed thirty-day period.

On the other hand, Caltex argues that:

> Even assuming without conceding that the importer must file both the IEDs and IEIRDs within the 30-day prescriptive period, petitioner still erroneously argues that abandonment in the present case occurred 'by operation of law'. While Section 1802 of the Tariff and Customs Code provides that abandoned articles are ipso facto deemed property of the government, this provision necessarily presumes that all requirements of the law are satisfied. In this regard, it bears repeating that Section 1801 (b) explicitly requires petitioner to give the importer due notice prior to initiating abandonment proceedings. CPI respectfully submits that without this essential requisite, abandonment cannot occur by operation of law.[9]

Citing Customs Memorandum Order No. 15-94 (CMO 15-94), Caltex further argues that the position taken by the Commissioner is despotic and oppressive in ruling "that lack of due notice is warranted by CPI's knowledge

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9 Comment, C.T.A. EB No. 121, pp. 13 – 14.

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of the arrival of goods, its supposed custody from the time of discharge, and its familiarity with BOC procedures in the release of importations. In other words, petitioner unilaterally deprived CPI of constitutional due process because at any rate, in its opinion, the latter was privy to its rights and obligations as an importer".[10]

We find for the petitioner Commissioner of Customs. We quote with approval a portion of the ruling of Justice Casanova in his dissenting opinion that notice to Caltex is not necessary in view of its actual knowledge of the arrival of the shipments of crude oil, thus:

> It may be worthy to state, for the sake of discussion, that the above cited Section 1801, paragraph (b) of the Tariff and Customs Code, requires the importer, in this case Caltex, to be notified by the Port authorities that they failed to file within the 30-day period import duties for their shipments before the same are deemed abandoned. However, **the facts and circumstances revealed that due notice in this case is not necessary.** The reasons, as the records will show, are obvious.
>
> First, **petitioner is fully aware that their shipments have arrived in the Port of Batangas.** In fact, the oil shipments were discharged from the carrier docked at their respective private pier/wharf into their shore tanks. All the while, Caltex has the custody of their oil importations from the time of their discharge. It is incumbent upon them to know its obligation to file the IEIRD within the 30-day period prescribed by law.
>
> Second, **Caltex is a regular importer of oil and oil products. It is not unfamiliar with the procedures, rules and regulations observed/followed in the Bureau of Customs in the release of the importations.** As a matter of fact, importers, including the petitioner, can, under existing rules and regulations, file advance import entry even before the arrival of the shipment to expedite the release of the same.
>
> Third, the minutes of the proceedings/deliberations of the House of Representatives Committee on Ways and Means on the proposed amendment to Section 1801 of the Tariff and Customs Code show that **the phrase "after due notice" was intended for**

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10 *Id.*, p. 17.

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owners, consignees, importers of the shipments who lived in rural areas or distant places far from the port where the shipments were discharged; who are uninitiated with customs procedures and who need the help/advise of people on how to file an entry. It was emphasized during the deliberations that majority of importers in Metro Manila are knowledgeable of the procedures and governing rules and procedures in the release of importation. There is no doubt that Caltex fall *(sic)* under the category of knowledgeable importer.

It is worth mentioning that at this point FRAUD has already been established against the government between the former District Collector of the Port of Batangas and Messrs. Casabal and Cabrera of Caltex Phils., Inc.

Records show that Caltex bided its time to file its import entries after the 30-day period has prescribed at 3% rate of duty. The District Collector, despite being informed by his subordinates about the lapse of the prescribed period, allowed the acceptance of the entry and the collection of the duty based on the declared rate, in clear violation of the above-mentioned provision of the Tariff and Customs Code. Obviously, the District Collector, in conspiracy with the above-named officials of Caltex Philippines Inc., acted without authority or abused his authority by giving undue benefits to the importers. He allowed the processing, payment and the subsequent release of the shipments. The imported crude oil valued at PHP 2,176,155,929.00 should have been forfeited in favor of the government but were instead released after the petitioner was allowed to pay the meager amount of duties and taxes. Such act of the District Collector caused damage and prejudice to the government.

Section 1801 is clear that, regardless of the intention of petitioner Caltex, when it failed to file the required entries it has abandoned in favor of the government the subject crude oil. The fact that petitioner Caltex applied for special permit to discharge shipments, immediately filed import entry declarations and paid tentative import and special duties and other fees to the Bureau of Customs, paid the Bureau of Customs underguarding fees from the time the shipment arrived up to the time of its release, was issued "Authorities to Release Imported Goods" by Customs authorities, and that the five shipments were directly unloaded and stored in the oil tanks owned by it, does not alter the fact that, by operation of law, the abandonment of the subject imported articles had already set in.[11] *(Emphasis supplied)*

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11 Dissenting Opinion, C.T.A. CASE No. 6358, pp. 4-6.

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As succinctly discussed in the above-quoted dissenting opinion, Caltex was fully aware that their shipments have arrived at the Port of Batangas. A concrete manifestation of this actual knowledge of the arrival of the crude oil is the fact that *"the oil shipments were discharged from the carrier docked at their respective private pier/wharf into their shore tanks. All the while, Caltex has the custody of their oil importations from the time of their discharge".* Hence, Caltex cannot deny that it had actual knowledge of the fact of arrival of the shipments of crude oil.

The Supreme Court had categorically ruled that **actual knowledge of the surrounding circumstances is notice in itself**, thus:

> We agree with the Sandiganbayan. The purpose of the notice requirement in Article 10 of the ETPI Articles of Incorporation is to give the stockholders knowledge of the intended sale of shares of stock of the corporation, in order that they may exercise their preemptive right. **Where it is shown that a stockholder had actual knowledge** of the intended sale within the period prescribed to exercise the right, **the notice requirement had been sufficiently met**. In the case at bar, PCGG had actual knowledge of UNIMOLCO's offer to sell its shares of stock. In fact, it issued Resolution No. 96-142 enjoining the sale of the said shares of stock to Smart. **Petitioner, thus, cannot feign lack of notice.**[12] *(Emphasis supplied)*

The Supreme Court reached the same conclusion in the case of *Bunye, et al., vs. Sandiganbayan, et al.*[13] where it ruled as follows:

> **As regards the finding *a quo* that the revocation or rescission of subject contract was effected sans any notice,** suffice it to invite attention that prior to the symbolic and ceremonial take-over of the new public market of Muntinlupa by the petitioners herein, a lot of posters announcing the intention of the Municipality of Muntinlupa to take over the management and operation of the New Muntinlupa Public Market, were posted in the vicinity of the market

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12 *Republic of the Philippines vs. Sandiganbayan, et al.*, G.R. No. 128606, December 4, 2000 (346 SCRA 760)

13 G.R. No. 122058, May 5, 1999 (306 SCRA 663)

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> place, where the officers of KBMBPM were then holding office. Moreover, having actively participated in the public hearing on the enactment and implementation of Resolution No. 45, **Mr. Amado Perez, the General Manager of KBMBPM at the time, had actual knowledge of the impending take-over of the Muntinlupa public market by the local government. Undoubtedly, KBMBPM was duly notified of such development and could not validly feign any denial of their right to due process**. *(Emphasis supplied)*

In the same vein, the requirement of a written notice prescribed by Article 1623 of the Civil Code was held as not necessary in view of the actual knowledge of the person entitled to such written notice:

> In this case, it appears that private respondent Pedro Miquiabas acted as middleman and was present when the vendor signed the deed of sale. **It is obvious that he had actual knowledge of the sale. Thus, a written notice to him as required by Article No. 1623 of the Civil Code is not necessary.** The only purpose of such written notice is to insure that all the co-owners shall be actually notified of the sale and to remove all doubt as to the perfection of the sale.[14] *(Emphasis supplied)*

In all of the foregoing cases, **the requirement of notice was held as unnecessary because of the actual knowledge of the facts** by the person who may be entitled to such notice. Therefore, Caltex's argument that it was allegedly denied due process due to lack of notice is misplaced. It already knew that the shipments of crude oil have arrived and it was incumbent upon it to file the necessary entry papers within the non-extendible period of 30 days, which obligation is also within its knowledge and ability as a knowledgeable and regular importer of crude oil. However, Caltex deliberately chose not to comply with its obligation under Section 1301 of the TCCP.

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14 *Distrito, et al., vs. Hon. Court of Appeals, et al.*, G.R. No. 95256, May 28, 1991 (197 SCRA 606)

Parenthetically, Caltex asserts that pursuant to CMO 15-94 it should have been notified by the Commissioner of Customs. It quoted the following portion of CMO 15-94:

> B.2 Implied Abandonment occurs when:
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> B.2.1 The owner, importer, consignee, interested party or his authorized broker/representative, after due notice, fails to file an entry within a non-extendible period of thirty (30) days from the date of discharge of last package from the carrying vessel or aircraft.
>
> xxx xxx xxx
>
> Due Notice to the consignee/importer/owner/interested party shall be by means of posting of a notice to file entry at the Bulletin Board seven (7) days prior to the lapse of the thirty (30) day period by the Entry Processing Division listing the consignees who/which have not filed the required import entries as of the date of the posting of the notice and **notifying them of the arrival of their shipment,** the name of carrying vessel/aircraft, Voy. No. Reg. No., and the respective B/L No./AWB No. with a warning, as shown by the attached form, entitled: "URGENT NOTICE TO FILE ENTRY" which is attached hereto as Annex A and made an integral part of this Order. *(Emphasis supplied)*

However, instead of strengthening Caltex's position, this Court is convinced, *a fortiori*, that under the facts obtaining in the present controversy and in accordance with the above-quoted provision of CMO 15-94, the giving of notice to respondent is no longer necessary in view of the following reasons:

1) Caltex's **actual knowledge** of the arrival of the shipments of crude oil and its actual physical possession thereof; and

2) Caltex **committed fraud against the government** by deliberately not complying with the mandatory thirty-day period for the filing of the IEIRDs and the employment of other machinations.

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The purpose of posting an "Urgent Notice to File Entry" pursuant to Section B.2.1 of CMO 15-94 is only **to notify the importer of the "arrival of its shipment"** and the details of said shipment. It is not disputed that Caltex not only had actual knowledge of the arrival of its shipments of crude oil but also had the actual physical possession thereof. This is clearly shown by the fact that the crude oil were directly unloaded and stored in the oil tanks owned by respondent in its Batangas refinery. Therefore, the posting of the notice of arrival of the shipments of crude oil was no longer necessary because the only purpose of said notice, pursuant to Section B.2.1 of CMO 15-94, is "to notify them of the arrival of their shipment". Caltex already knew of the arrival of its shipments and as a matter of fact, it had already taken physical possession of said shipments.

Moreover, both the majority and the dissenting opinions found that **there was fraud** perpetrated by Caltex through its deliberate non-filing of the IEIRDs within the mandatory thirty-day period for the sole purpose of evading the payment of the correct customs duties. Thus, the majority of the members of the Court in Division ruled as follows:

> After a painstaking review of the records of the case and deliberation on the issues raised and parties' respective arguments, **the Court finds that respondent is correct when he affirmed the findings of the Customs Intelligence & Investigation Service, Investigation & Prosecution Division of the existence of fraud.** And, as prescription does not apply, the government must demand petitioner to pay deficiency customs duties due from the five importations. Section 1603 of the Tariff and Customs Code reads:
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> > Sec. 1603. Finality of Liquidation. — When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will,

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> after the expiration of one (1) year from the date of the final payment of duties, in the absence of fraud or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.
>
> The one-year period as provided in the above section does not apply when there is fraud. Fraud "is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another." Taxpayers devise numerous schemes to evade payment of correct taxes. As the Supreme Court declared: "the fertility of man's invention in devising new schemes of fraud is so great that the courts have declined to define it, reserving to themselves the liberty to deal with it under whatever form it may present itself." Further, "fraudulent scheme is evidenced by a series of related acts committed one after another, silently, quietly and surreptitiously." **In the instant case, through a series of acts designed to perpetuate fraud, petitioner almost successfully evaded payment of correct custom duties on its five importations. As fraud is present, respondent may assess and collect from petitioner deficiency customs duties.**[15] *(Emphasis supplied)*

Similarly, the dissenting opinion of Justice Casanova pointed out that the non-filing of the IEIRDs within the thirty (30) day period "was done with the application of DELIBERATE CONCEALMENT, MANIPULATION and SCHEME employed by Caltex and its cohorts."[16] He ruled that fraud against the government was clearly established by the facts, thus:

> It is worth mentioning that at this point FRAUD has already been established against the government between the former District Collector of the Port of Batangas and Messrs. Casabal and Cabrera of Caltex Phils. Inc.
>
> **Records show that Caltex bided its time to file its import entries after the 30-day period has prescribed at 3% rate of duty. The District Collector, despite being informed by his subordinates about the lapse of the prescribed period, allowed the acceptance of the entry and the collection of the duty based on the declared rate, in clear violation of the above-mentioned provision of the Tariff and Customs Code.**

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15 Assailed Decision, pp. 12-13.
16 Dissenting Opinion, p. 2.

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> Obviously, the District Collector, in conspiracy with the above-named officials of Caltex Philippines Inc., acted without authority or abused his authority by giving undue benefits to the importers. He allowed the processing, payment and the subsequent release of the shipments. The imported crude oil valued at PHP 2,176,155,929.00 should have been forfeited in favor of the government but were instead released after the petitioner was allowed to pay the meager amount of duties and taxes. Such act of the District Collector caused damage and prejudice to the government.[17] *(Emphasis supplied)*

Undoubtedly, the non-filing of the IEIRDs on time was a predetermined course of action which Caltex had adopted deliberately and purposely. It is a part of a series of acts to defraud the government. In such a case, the need for the giving of any notice is rendered unnecessary because the same would be ineffectual and pointless in the face of Caltex's predetermined and deliberate intention of not complying with the thirty-day period for the filing of the IEIRDs prescribed by Section 1301 of the TCCP. As stated above, the series of acts resulted to the irregular processing, payment and subsequent release of the shipments to the damage and prejudice of the government.

In fine, Caltex's actual knowledge of the arrival of the crude oil shipments, its actual physical possession thereof and its predetermined, and deliberate intention not to comply with the mandatory 30-day period which is a part of the series of acts constituting fraud, negate the need for notice. Consequently, Caltex's argument that there could be no abandonment due to the failure of the Commissioner of Customs to give it due notice cannot be sustained.

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17 *Id.*, p.5.

In view of all the foregoing, this Court holds and so rule that the subject shipments of crude oil were impliedly abandoned pursuant to Section 1801 (b) of the TCCP.

ABANDONED ARTICLES ARE *IPSO FACTO* DEEMED THE PROPERTY OF THE GOVERNMENT

Section 1802 of the TCCP provides that an abandoned article shall ***ipso facto*** be deemed the property of the Government and shall be disposed of in accordance with the provisions of this Code. "The term *ipso facto* is defined as by the very act itself; by mere act. Probably a closer translation of the Latin term would be by the fact itself."[18] Thus, there is no need for any affirmative act on the part of the government with respect to the abandoned imported articles since the law itself provides that the abandoned articles shall ***ipso facto*** be deemed the property of the government, hence, ownership over the abandoned articles is transferred to the government by operation of law pursuant to Section 1802 of the TCCP, as amended by Republic Act No. 7651 known as *"An Act to Revitalize and Strengthen the Bureau of Customs, Amending for the Purpose Certain Sections of the Tariff and Customs Code of the Philippines, As Amended."*

A historical review of the pertinent provisions of the TCCP dispels any view that is contrary to the automatic transfer (i.e. *ipso facto)* of ownership of the abandoned articles to the government by operation of law, *viz*:

[18] Words and Phrases, Permanent Edition, Volume 22, p. 643.

Under the former Administrative Code, Act. No. 2711, Section 1323 of Article XV thereof provides:

> SECTION 1323. *When implied abandonment takes effect – Notice* – An implied abandonment shall not take effect until after the property shall be declared by the collector to have been abandoned and notice to the party in interest as in seizure cases.[19]

Thereafter, Republic Act No. 1937[20] known as *"An Act to Revise and Codify the Tariff and Customs Laws of the Philippines"* was enacted. Section 1801 thereof provides:

> SECTION 1801. *Abandonment, Kinds and Effect of.* – Abandonment is express when it is made direct to the Collector by the interested party in writing and it is implied when, from the action or omission of the interested party, an intention to abandon can be clearly inferred. The failure of any interested party to file the import entry within fifteen days or any extension thereof from the discharge of the vessel or aircraft, shall be implied abandonment. An implied abandonment shall not be effective until the article is declared by the Collector to have been abandoned after notice thereof is given to the interested party as in seizure cases.
>
> Any person who abandons an imported article renounces all his interests and property rights therein.

Presidential Decree No. 1464 entitled *"A Decree to Consolidate and Codify All Tariff and Customs Laws of the Philippines"* dated June 11, 1978 did not amend the provisions of the TCCP on abandonment. The latest amendment was introduced by Section 1802 of Republic Act No. 7651[21] which provides:

> SEC. 1802. *Abandonment of Imported Articles.* – **An abandoned article shall *ipso facto* be deemed the property of the Government** and shall be disposed of in accordance with the provisions of this Code. *(Emphasis supplied)*

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19 Act No. 2711, An Act Amending the Administrative Code, March 10, 1917.
20 Approved June 22, 1957.
21 Approved June 4, 1993 (see full text on pp. 21-22)

The amendatory law, R.A. No. 7651, deleted the requirement that there must be a declaration by the Collector of Customs that the goods have been abandoned by the importers and that the importers shall be given notice of said declaration before any abandonment of the articles could become effective.

Clearly, by using the term *ipso facto* in Sec. 1802 of R.A. No. 7651, the legislature intended that there is neither any need for abandonment proceedings nor a declaration that the imported articles have been abandoned before ownership thereof could be transferred to the government.

Caltex's failure to file "an entry" within a non-extendible period of thirty days from date of discharge of the last package from the carrying vessel constitutes implied abandonment of the imported articles. Consequently, from the precise moment that the non-extendible thirty-day period had lapsed, the abandoned shipments of imported crude oil shall be deemed the property of the Government of the Republic of the Philippines. Therefore, when Caltex withdrew the crude oil shipments for consumption, it appropriated for itself a property that is already owned by the government. Consequently, Caltex is liable for the total dutiable value of the shipments of imported crude oil amounting to P1,210,280,789.21[22] reduced by the total amount of duties paid amounting to P316,499,021.00[23] thereby leaving a balance of P893,781,768.21.

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22 Assailed Decision, p. 21.
23 *Id.*, pp. 3-4 (the total of the duties paid is P316,499,021.00)

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Considering that this Court had resolved the issue of abandonment raised by the petitioner Commissioner in C.T.A. EB No. 121 in his favor, this Court finds that the resolution of the issues raised by Caltex in C.T.A. EB No. 122 is no longer necessary.

WHEREFORE, premises considered, in C.T.A. EB No. 121 filed by the Commissioner of Customs, the Petition for Review is hereby **GRANTED,** whereas in C.T.A. EB No. 122 filed by Chevron Philippines Inc. (formerly Caltex Philippines, Inc.), the Petition for Review is hereby **DISMISSED**. The appealed Decision in C.T.A. CASE No. 6358 is hereby **REVERSED** and **SET ASIDE,** and a new one is hereby **ENTERED** finding Chevron Philippines Inc. (formerly Caltex Philippines, Inc.) to have impliedly abandoned the subject shipments of crude oil. Accordingly, Chevron Philippines Inc. (formerly Caltex Philippines, Inc.) is hereby **ORDERED to PAY** the Commissioner of Customs the total amount of **EIGHT HUNDRED NINETY THREE MILLION SEVEN HUNDRED EIGHTY ONE THOUSAND SEVEN HUNDRED SIXTY EIGHT PESOS and TWENTY-ONE CENTAVOS** (P893,781,768.21), plus six percent (6%) legal interest *per annum* accruing from the date of promulgation of this Decision until its finality. Upon the finality of this Decision, the sum so awarded shall bear an interest at the rate of twelve percent (12%) *per annum* until its full satisfaction.

SO ORDERED.

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

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WE CONCUR:

(Concurs with Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CUSTOMS,
Petitioner,
-versus-

C.T.A. EB No. 121
(C.T.A. Case No. 6358)

CHEVRON PHILIPPINES INC.
[Formerly: Caltex (Philippines) Inc.],
Respondent.

x- x

CHEVRON PHILIPPINES INC.
[Formerly: Caltex (Philippines) Inc.],
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. EB No. 122
(C.T.A. Case No. 6358)

Present:

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

Promulgated:
MAR 0 1 2007

x--x

DISSENTING OPINION

BAUTISTA, J.:

With due respect to the conclusion reached by the *ponente* and concurred in by my esteemed colleagues, I differ from their opinion in finding Chevron

Philippines Inc. *[formerly Caltex Philippines, Inc.]* ("Caltex") to have impliedly abandoned the subject shipments of crude oil.

In the *ponencia,* the majority opinion ruled that the failure of Caltex to file Import Entries and Internal Revenue Declarations ("IEIRDs") within a non-extendible period of thirty days from date of discharge of the last package from the carrying vessel constitutes implied abandonment of the imported articles pursuant to Section 1801 (b) of the Tariff and Customs Code of the Philippines ("TCCP"). According to the majority opinion, from the precise moment that the non-extendible thirty-day period had lapsed, the abandoned shipments of imported crude oil shall be deemed the property of the Government of the Republic of the Philippines. Therefore, when Caltex withdrew the crude oil shipments for consumption, it appropriated for itself a property that is already owned by the government. Consequently, the majority of the members of the Court *En Banc* found Caltex liable for the total dutiable value of the shipments of imported crude oil amounting to P1,210,280,789.21[1] reduced by the total amount of duties paid amounting to P316,499,021.00[2] thereby leaving a balance of P893,781,768.21.

While I agree with the majority that Caltex should be held liable for customs duties on the subject shipments of imported crude oil, I maintain my position that Caltex had no intention to abandon its shipment.

Section 1801 of the TCCP states that:

> "SEC. 1801. Abandonment, Kinds and Effects of. — An imported article is deemed abandoned under any of the following circumstances:
>
> a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or
>
> b. When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be

[1] Assailed Decision, p. 21.
[2] *Id.,* pp. 3-4 (the total of the duties paid is P316,499,021.00) .

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> extendible, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date of posting of the notice to claim such importation.
>
> Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein."

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

In this case, records reveal that Caltex had no intention to abandon its shipments, as shown by the following circumstances:

> (1) it applied for special permit to discharge shipments;[3]
>
> (2) it immediately filed import entry declaration for each of the eight shipments and correspondingly paid tentative import and special duties and other fees;[4]
>
> (3) it paid the Bureau of Customs underguarding fees from the time the shipments arrived up to the time of release;[5]
>
> (4) it was issued authorities to release imported goods by customs authorities;[6] and,
>
> (5) The five shipments were directly unloaded and stored in the oil tanks owned by petitioner in its Batangas refinery as the Bureau of Customs does not have storage or receiving facilities for petroleum products.[7]

It is apparent that the Commissioner of Customs acknowledged that Caltex had claimed and did not abandon its eight shipments when he assessed

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[3] Exhibits D, P, BB, II, TT & ZZ.
[4] As shown by EIDs marked as Exhibits A, N, AA, FF, RR & XX and by BOC official receipts marked as Exhibits D, T, Z, HH, SS & YY.
[5] Exhibits G, G-1 to G-10, H, H-1 to H-6, I, I-1 to I-5, U, U-1 to I-5, V, V-1 to V-6, W, W-1 to W-8, DD, DD-1 to DD-4, EE, EE-1 to EE-3, JJ, JJ-1 to JJ-8, LL, LL-1 to LL-6, MM, MM-1 to MM-2, EEE, EEE-1 to EEE-5; Annexes A & B of the Amended Joint Stipulation of Facts and Issues.
[6] Exhibit HHH & III.
[7] TSN, November 25, 2002, p. 9.

the latter underguarding fees from the arrival of the said shipments up to the time they were transferred to the tanks in its Batangas refinery.

Moreover, if there was indeed an implied abandonment in this case, no abandonment proceedings were instituted against Caltex in accordance with Section 1801 of the TCCP, Customs Administrative Order No. 005-93[8] and Customs Memorandum Order No. 015-94. And ironically, the Commissioner of Customs made the following admissions:

> "1. No abandonment proceedings were ever instituted against petitioner;
>
> 2. The eight shipments have actually long been released and delivered to petitioner by the Bureau of Customs;
>
> xxx xxx xxx
>
> 4. The Bureau of Customs did not take physical possession of the shipments." [9]

The language of paragraph b of Section 1801 of the TCCP, as well as the rules, is clear. It is axiomatic in statutory construction that when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says.

However, while I find that there was no abandonment in this case, I wish to emphasize that the Commissioner of Customs was correct when he affirmed the findings of the Customs Intelligence & Investigation Service, Investigation & Prosecution Division on the existence of fraud. And, since prescription does not apply, the government must demand that Caltex pay deficiency customs duties due from the five importations. Section 1603 of the TCCP reads:

> "Sec. 1603. Finality of Liquidation. — When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of one (1) year from the date of the final payment of duties, in the absence of fraud or protest or compliance audit

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[8] Rules and Regulations on Abandonment.

[9] Joint Stipulation of Facts and Issues, pars. 1, 2 & 4 and Amended Joint Stipulation of Facts and Issues, pars. 1, 2 & 4.

> pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative."[10]

The one-year period as provided in the above section does not apply when there is fraud. Fraud "is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another."[11] In the case at bar, through a series of acts designed to perpetuate fraud, Caltex almost successfully evaded payment of correct custom duties on its five importations. Since fraud is present, the Commissioner of Customs may assess and collect from Caltex deficiency customs duties.

Section 204 of the TCCP reads:

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

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

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

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

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

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> withdrawal, by the customs official designated to receive the withdrawal entry and any duties, taxes, fees and/or other lawful charges required to be paid at the time of withdrawal have been deposited with the customs official designated to receive such payment."

Based on the foregoing, imported articles shall be subject to the rate of import duty at the time of entry or withdrawal from the customs warehouse.

It must be pointed out that Caltex filed two forms of import entry for each shipment — import entry declaration ("IEDs") and IEIRDs. Contrary to the ruling of the majority that it is the filing of the IEIRDs which constitute "entry", I maintain my view that the five importations were deemed entered at the time when Caltex filed its IEDs and, thus, subject to the 10% rate of import duty.

Thus, the dates when Caltex filed its IEDs should be taken into consideration as to what duty rate to apply in assessing the correct customs duty. In other words, on the date when Caltex filed its IEDs and paid ninety percent of the total dutiable value prior to the arrival of shipments, R.A. 8180 was not yet effective and, therefore, the prevailing duty rate was 10% which the Bureau of Customs correctly imposed on the importations of Caltex as clearly printed on its IEDs. This is consistent with established jurisprudence that declarations in import entries are conclusive upon the party who executed the same.[12]

In addition, Section 2 of Presidential Decree No. 1853 states that: "The amount of the duties due shall be based on the declaration of the applicant (importer) for the letter of credit, subject to the penalties prescribed under Section 2503 of the Tariff and Customs Code of 1978, as amended."[13]

Furthermore, based from the testimony of its witness, Caltex was importing goods under "EPRS" or "Express Processing in the Release of Shipments". As an

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[12] Caltex (Philippines), Inc. vs. Court of Appeals and Commissioner of Customs, G.R. No. 104781, July 10, 1998.
[13] Entitled "Requiring Deposits of Duties at the Time of Opening of Letters of Credit Covering Imports and For Other Purposes" and took effect on January 1, 1983.

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importer, Caltex was required to submit letter/s of credit and the IED and pay duties, taxes and other charges due on the shipments under CMO No. 045-88, dated June 1, 1988.

The IEDs are the required entry forms to be filed by importers. Upon filing of the IEDs, the imported articles must be considered as entered by virtue of Section 205 of the TCCP. Consequently, the subject importations should be subject to the prevailing rate of 10%.

Caltex, as a regular importer, is very well aware that the duty rate as found in the IEDs is controlling over the duty rate as found in the IEIRDs. This is apparent when Caltex applied for a special permit to discharge its shipments before the latter's arrival and gave its commitment to pay customs and special duties "based on the initial computations" and to file its final entries "within the prescribed period as provided for".[14]

Nonetheless, given the situation that there were discrepancies between the duties declared in the IEDs and in the IEIRDs, the TCCP clearly provides that duties shall not be assessed upon amounts less than the entered values. I quote:

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

What clearly demonstrates the deliberate intention of Caltex to evade payment of correct customs duties was its act or omission of not filing any statement of error, and requesting for reappraisal or certification informing the Collector at the Port of Batangas that the entered values as found in the IEDs

[14] Exhibits "D", "P", "BB", "II", "TT" and "ZZ".

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were higher than the dutiable value declared in its final entries (IEIRDs). It did not even present as evidence a final decision of the Commissioner allowing the lower assessment of duties pursuant to the above section.

Regardless of the date of filing of the IEDs and IEIRDs, the subject shipments should be subject to the prevailing 10% rate of import duty at the time of withdrawal of the shipments of Caltex pursuant to Section 204 of TCCP, above quoted.

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

As an importer, Caltex knows that it must file its final entries within the non-extendible period of thirty (30) days from the dates of discharge of the eight shipments. However, it was able to file the final entries on the shipments beyond the allowable period.

The belated filing of IEIRDs without valid reasons and declaring therein a lower duty rate of 3%, the non-disclosure of discrepancies on the duties declared in the IEDs and IEIRDs covering the subject shipments and the payment of lower customs duties despite the absence of the final decision of the Commissioner of Customs allowing the lower assessment of customs duties *only on two shipments* covered by IEIRD Nos. 818-96 and 606-96, are clear *indicia* of the intention of Caltex to defraud the government of revenues. Consequently, since Caltex intentionally evaded the payment of correct customs duties by declaring a lower customs duty of 3% in its IEIRDs instead of the required 10% rate, it should be held liable to pay the deficiency customs duty of 7%, plus surcharge of 25% based on Section 2501 of the TCCP.

Based on the dutiable value as found in the IEIRDs and as stipulated by the parties, the deficiency customs duties on the subject importations should be computed as follows:

BOC Entry No.	**Dutiable Value per IEIRD**
600-96	P 98,594,449.84
601-96	240,014,504.30
602-96	147,891,427.75
603-96	239,496,602.83
604-96	29,249,571.67
605-96	61,983,893.22
606-96	233,282,431.20
818-96	159,767,908.40
TOTAL	**P1,210,280,789.21**

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

In fine, I maintain my dissent from the majority opinion and opine that there was no abandonment of the subject importations. Therefore, Caltex should be held liable for the payment of deficiency customs duties in the amount of One Hundred Five Million Eight Hundred Ninety-Nine Thousand Five Hundred Sixty-Nine and Five Centavos (P105,899,569.05), which shall bear interest at six percent (6%) per annum accruing on April 5, 2005, the date of promulgation of the Decision of the Court in Division in C.T.A. Case No. 6385, until its finality. In addition thereto, the sum so awarded shall likewise bear interest at the rate of 12

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percent (12%) per annum from the time this judgment becomes final and executory until full satisfaction thereof.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

ERNESTO D. ACOSTA
Presiding Justice