

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER EN BANC

UNIOIL
PHILIPPINES, INC.,

PETROLEUM

C.T.A. EB NO. 503
(C.T.A. CASE NO. 7879)

Petitioner,

Present:

-versus-

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, - JJ.

HON. NAPOLEON MORALES, in
his capacity as Commissioner of
Customs, HON. FEDERICO
BULANHAGUI, in his capacity as
OIC-District Collector of the Port of
Lima, Bataan, HON. FERNANDO
TUASON, in his capacity as Chief of
the Intelligence Division of the CIIS,
HON. JAIRUS PAGUNTALAN, in
his official capacity as Director of the
CIIS, and their successors, agents,
assignees, or any other person acting
under their authority,

Promulgated:

APR 15 2010

4:45 p.m.

Respondents.

X ----- X

DECISION

PALANCA-ENRIQUEZ, J.:

The decisions of the Commissioner of Customs, which are
appealable to the Court of Tax Appeals (CTA), under *Section 3(a)(4)*,

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Rule 4 of the 2005 Revised Rules of CTA, as amended, are judgments or orders that dispose of the case in a manner that leaves nothing to be done by it in respect thereto.

THE CASE

This is a Petition for Review filed by Unioil Petroleum Philippines, Inc. (hereafter “petitioner”), under *Section 3(a)(4), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to reverse and set aside the Resolutions dated March 20, 2009 and June 22, 2009 rendered by the Former First Division of this Court in C.T.A. Case No. 7879, entitled “Unioil Petroleum Philippines, Inc. vs. Hon. Napoleon Morales, et al.,” the respective dispositive portions of which read, as follows:

“**WHEREFORE**, premises considered, the application for the issuance of TRO and/or Writ of Preliminary Injunction is hereby **DENIED**. Furthermore, considering that this Court has no jurisdiction over the instant Petition for Review, the same is hereby **DISMISSED**.”

SO ORDERED.”



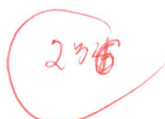
“**WHEREFORE**, there having no new matters or issues advanced by the petitioner in the present motion which may compel this Court to reverse, modify, or amend the March 20, 2009 Resolution of this Court, petitioner’s “Motion for Reconsideration” is hereby **DENIED** for lack of merit.

SO ORDERED.”

THE PARTIES

Petitioner Unioil Petroleum Philippines, Inc. is a corporation duly organized and existing under Philippine Laws, with address at 2445 Pedro Gil St., Sta. Ana, Manila.

On the other hand, respondent Napoleon Morales is the duly appointed Commissioner of Customs and holds office at the Bureau of Customs, Port Area, Manila; respondent Federico Bulanlagui is the OIC-District Collector of the Port of Limay, Bataan and holds office at Port of Limay, Bataan; respondent Fernando Tuason is the Chief, Intelligence Division of the Customs Intelligence and Investigation Service (“CIIS”) and holds office at the Bureau of Customs, Manila; respondent Jairus Paguntalan is the Director of the CIIS and holds office at the Bureau of Customs, Manila; while respondents John and Jane Does are unidentified individuals, representatives and other persons, acting under the authority



of and implementing the orders of respondents Commissioner Morales, Bulanlagui and Paguntalan.

THE FACTS

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

Petitioner is an importer of Aromatic Hydrocarbons with permit from the BIR, as evidenced by its Permit No. LTAD II (P)-001-10-07-13639. In addition, at the time of the importation of the subject product, petitioner was likewise an accredited importer by the Bureau of Customs (BOC), as evidenced by CAS Accreditation No. CASRIM 0221202-08.

On April 17, 2008, petitioner entered into a Purchase Agreement with Yokohama Tire Philippines, Inc. for the supply of Aromatic Hydrocarbon, a raw material.

On June 19, 2008, pursuant to the Purchase Agreement, petitioner imported, through MT Jin Hong, 8, 2,098,450 MTS of Aromatic Hydrocarbon covered by Bill of Lading with B/L No. JH8-0619.

Upon arrival, petitioner immediately processed all the necessary documents with the BOC in relation to said importation, including the



filing of appropriate Import Entry and Internal Revenue Declaration (IEIRD).

Prior to its withdrawal, petitioner fully paid the corresponding import taxes and duties in the total amount of P10,814,417.00 over the said products, as evidenced by BC Form 38-A with Nos. 152787704, 153199487 and 158353431.

Based on intelligence information that the importation of petitioner Unioil declared as Aromatic Hydrocarbons is actually petroleum oil and oil obtained from bituminous minerals subject to excise tax, the CIIS directed its field agents to obtain samples of said importation. The samples taken were brought to the University of the Philippines (UP) – National Sciences Research Institute (NSRI), Research and Analytical Services Laboratory for analysis.

On July 25, 2008, Dr. Evangeline C. Santiago of the UP-NSRI submitted a report on the results of the laboratory analysis conducted on said samples showing that the same contains point zero one percent (0.01%) by weight of total Polycyclic Aromatic Hydrocarbons (17 PAHs). Dr. Santiago explained that the samples are really oil products



and not Aromatic Hydrocarbons, as petitioner represented them to be, since their Aromatic contents are negligible.

The CIIS informed petitioner of the findings of UP-NSRI. Petitioner claimed that the findings of UP-NSRI is not conclusive because it accounted only for Polycyclic Aromatic Hydrocarbon and that the Monocyclic Aromatic Hydrocarbons (benzene and its derivatives) were not accounted for in the laboratory test results, which were allegedly the main component of the samples submitted. In support thereof, petitioner cited the Certificate of Quality issued from its supplier, which stated that based on ASTM D 2007, the Aromatics content of the shipment from which the samples were taken, was allegedly seventy point sixty-seven percent (70.67%).

To further confirm the aforesaid findings of the UP-NSRI, the CIIS referred the matter of analysis of subject samples to a U.S.-based laboratory to properly determine and classify the composition of said samples.

On December 11, 2008, the CIIS received the Laboratory Report dated December 5, 2008 from the US Immigration and Customs



Enforcement of the US Department of Homeland Security issued by the Laboratories and Scientific Services of the US Customs and Border Protection, Department of Homeland Security. Pertinent portion of the Laboratory Report reads, as follows:

“This sample consists of a viscous greenish-brown liquid contained within four metal cans.

Laboratory analysis finds that this sample has an API gravity of 9.9, an ash content of approximately 1.3 percent, an aromatic hydrocarbon content of approximately eleven percent, and a non aromatic hydrocarbon content of approximately 89 percent.

This sample is a petroleum oil classifiable under HTS HEADING 2710.

Methods: SFTEC-GC/MS.2 and ASTM E. 1252.”

As a result, the CIIS submitted its Officers-On-Case-Report dated January 28, 2009 to the Chief of the Intelligence Division of the BOC, with the following conclusion and recommendation:

“CONCLUSION:

Considering that importations of UNIOIL/OILINK declared as AROMATIC HYDROCARBON are actually PETROLEUM OILS – subject to EXCISE TAXES, in violation of Section 2503 (misdeclaration) of the Tariff and Customs Code of the Philippines (TCCP), as amended, in relation to Republic Act No. 8424 (National Internal



Revenue Code) – for non-payment of EXCISE TAX, is therefore established, and subject to FORFEITURE under Section 2530, Sub-para. (f), (i), (1) -3, 4, and 5 of the TCCP, as amended.

RECOMMENDATION:

In the light of the foregoing, this office most respectfully recommend for the following:

1. Request for immediate issuance of WARRANT OF SEIZURE AND DETENTION (WSD) against shipments of AROMATIC HYDROCARBON of UNIOIL/OILINK presently stored at Storage Tank Nos. 6 and 21 located at OILINK depot in Lucanin, Mariveles, Bataan, for blatant violation of Section 2503 (Misdeclaration) of the TCCP, as amended, in relation to RA No. 8424 (NIRC), being subject to FORFEITURE under Section 2530, Sub-para. (f), (i), (1) – 3, 4, and 5 of the TCCP, as amended.

2. That BIR Ruling dated March 10, 2005, issued by the Deputy Commissioner for Legal & Inspection Group, be considered NULL AND VOID (as provided for in said MEMO) considering that the result of laboratory analysis is different from what was requested by UNIOIL for EXCISE TAX EXEMPTION.

3. That UNIOIL PETROLEUM PHILS. INC. /OILINK International Corporation be obliged to pay for unpaid EXCISE TAXES due on their previous importations of AROMATIC HYDROCARBON – commencing on the date of afore-cited ruling; and

4. That in order to determine the amount of excise tax that should have been collected from previous importations by UNIOIL/OILINK of “Aromatic



Hydrocarbon,” but which are found to be PETROLEUM OIL, copies of import entries covering said importations must be retrieved and secured by all legal means necessary.”

On January 30, 2009, Director Jairus D. Paguntalan of the CIIS issued his 1st Indorsement forwarding to the Commissioner of Customs the aforesaid Investigation Report dated January 28, 2009 of the OIC-CIIS with the recommendation that a warrant of seizure and detention be issued against the shipments of Aromatic Hydrocarbons, stored at Storage Tank Nos. 6 and 21 in Lucanin Point, Mariveles, Bataan for Violation of *Sections 2503 and 2530 (f), (i), (1)(3,4, & 5) of the TCCP, as amended, in relation to RA 8424.*

Acting on the said 1st Indorsement, the Commissioner of Customs issued his assailed 2nd Indorsement dated February 4, 2009.

On February 5, 2009, OIC-District Director Federico C. Bulanlagui issued a Warrant of Seizure and Detention (WSD) against said shipment of Aromatic Hydrocarbons stored at Storage Tank Nos. 6 and 21 of UNIOIL/OILINK, located at Lucanin Point, Mariveles, Bataan.



On the same day, the CIIS seized the subject shipment, which were stored at Storage Tank Nos. 6 and 21 of UNIOIL/OILINK in Lucanin Point, Mariveles, Bataan.

On March 9, 2009, petitioner filed a Petition for Review with prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction with this Court, docketed as C.T.A Case No. 7879.

On March 16, 2009, respondent Bulanhagui issued a notice of hearing informing the parties that the initial hearing thereon will be held on March 19, 2009.

On March 20, 2009, the Former First Division of this Court denied the Application for Issuance of TRO and/or Writ of Preliminary Injunction and dismissed the Petition for Review for lack of jurisdiction.

On April 7, 2009, petitioner filed a Motion for Reconsideration, which the Former First Division denied in a Resolution dated June 24, 2009.

Hence, the present Petition For Review.



On August 3, 2009, without necessarily giving due course to the Petition for Review, we ordered respondents to file their comment, not a motion to dismiss, within ten (10) days from notice.

On August 18, 2009, respondents filed a “Motion for Extension of Time to File Comment”, which was granted by the Former Court *En Banc*.

On September 15, 2009, respondents filed their Comment.

On September 22, 2009, the Former Court *En Banc* gave due course to the Petition for Review and ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice; after which the petition shall be deemed submitted for decision.

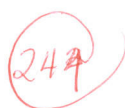
On October 27, 2009, respondents filed their Memorandum, while petitioner filed its Memorandum on November 10, 2009. Thus, the instant petition is now deemed submitted for decision.

The petition raises the following issues:

ISSUES

I

WHETHER OR NOT THE CTA FORMER FIRST
DIVISION COMMITTED GRIEVOUS ERROR WHEN IT



CONSIDERED THE DECISION OF THE
COMMISSIONER OF CUSTOMS AS A MERE
REFERRAL LETTER.

II

WHETHER OR NOT THE CTA FORMER FIRST
DIVISION COMMITTED GRIEVOUS ERROR WHEN IT
FAILED TO RECOGNIZE THE EXCEPTIONS TO THE
RULE ON EXHAUSTION OF ADMINISTRATIVE
REMEDIES.

III

WHETHER OR NOT THE CTA FORMER FIRST
DIVISION COMMITTED GRIEVOUS ERROR WHEN IT
DISMISSED THE PETITION FOR LACK OF
JURISDICTION.

Principal Issue

The foregoing issues boil down to the principal issue of whether
the Petition For Review filed in C.T.A. Case No. 7879 was correctly
dismissed by the Former First Division for lack of jurisdiction.

Petitioner UNIOIL's Arguments

Petitioner Unioil argues that the Constitution guarantees the right
of the people to be secure in their persons, houses, papers, and effects
against unreasonable searches and seizures; the essential requisite of
probable cause must still be satisfied before a warrantless search and

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seizure can be lawfully conducted; that only the collector can determine probable cause and issue the corresponding WSD; the subject articles were detained prior to the collector's determination of probable cause and issuance of the corresponding WSD; the determination of probable cause, if any, was based on hearsay evidence; that the 2nd Indorsement issued by the Commissioner of Customs is a final order, and disposed of the whole subject matter of the case; that the 2nd Indorsement cannot be a mere referral because said Indorsement delved into the merits of the case; that the 2nd Indorsement left nothing to be done but to enforce by execution what has been determined; that petitioner actually exhausted all administrative remedies as the Commissioner already made a determination of the case and even if petitioner failed to do so, the circumstances of this case constitute several exceptions to the rule of exhaustion of administrative remedies; that a number of exceptions to the rule on exhaustion of administrative remedies are availing in this case; that this case involves violation of petitioner's constitutional rights, not mere property rights and for this reason, this Honorable Court must wield its power of judicial review in order that it may curtail such abuses; and



that a decision in this case ultimately resolves the procedure in seizure cases.

Respondents' Counter-arguments

Respondent counters that the Former First Division correctly dismissed the petition for review on the ground that it has no jurisdiction over the subject matter thereof; that the assailed 2nd Indorsement is not a decision but a mere referral letter issued by the respondent Commissioner of Customs in the exercise of his administrative duty as head of the BOC; and that the Collector of Customs has exclusive jurisdiction over seizure and forfeiture proceedings, and the regular courts cannot interfere with his exercise thereof or stifle and put it to naught.

Respondents further contend that notwithstanding the absence of a WSD, the Collector of Customs may already order the seizure of the subject imported products, pursuant to *Section 2301 of the Tariff and Customs Code of the Philippines*.

Our Ruling

The petition is without merit.

**It is an Elementary Rule in
Procedure that the**



**Decision or Order which is
Appealable to this Court is
that which Resolved The
Case With Finality, and In
Effect Terminates or
Finally Disposes of a Case**

Section 3(a)(4), Rule 4 of the 2005 Revised Rules of the CTA, as amended, provides:

“SEC. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:

- (a) Exclusive original over or appellate jurisdiction to review by appeal the following:

xxx

xxx

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees, or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

xxx

xxx.”

Pursuant to the above provision, the CTA Court in Division has exclusive appellate jurisdiction to review by appeal the decisions of the Commissioner of Customs. Settled is the rule that the decision or order which is appealable to this Court, is that which has resolved the case with

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finality, and in effect terminates or finally disposes of a case, as it leaves nothing to be done by the Commissioner of Customs, as the case has been decided on the merits. Indeed, a decision connotes the adjudication or settlement of a controversy.

The amended 2nd Indorsement reads as follows:

2nd Indorsement
February 04, 2009

Respectfully forwarded to the OIC-District Collector, Port of Limay (Attn: Port Collector, Mariveles), **FOR APPROPRIATE ACTION**, the within preceding Indorsement dated 30 January 2009, of Director Jairus D. Paguntalan, CIIS and OIC, IEG, relative to the herein Investigation Report of the OIC-CIIS, Port of Manila dated 28 January 2009 re: Importation of aromatic hydrocarbon by UNIOIL PETROLEUM PHILS., INC./OILINK INTERNATIONAL CORPORATION, inviting attention to the findings of the UP Natural Sciences Research Institute, Research and Analytical Services, Laboratory and the Laboratories & Scientific Services, US Customs and Border Protection, Dept. of Homeland Security that the samples taken from the Storage Tank No. 6 of UNIOIL/OILINK located at Lucanin Point, Mariveles, Bataan is not an Aromatic Hydrocarbon but Petroleum Oil, thus, subject to excise tax.

Your Attention is likewise invited to the recommendation that a Warrant of Seizure and Detention be issued against the shipments of aromatic hydrocarbons presently stored at Storage Tanks No. 6 and 21 of UNIOIL/OILINK in Lucanin Point, Mariveles, Bataan for violation of Sections 2503 and 2530 (f), (i), (1)(3,4, & 5) of the TCCP, as amended, in relation to RA No. 8424.”



A careful scrutiny and examination of the above 2nd Indorsement clearly shows that the same is not a decision, but a mere referral letter issued by the Commissioner of Customs, referring to the OIC-District Collector, Port of Limay, the attached 1st Indorsement dated January 30, 2009 of respondent Jarius D. Paguntalan and the Investigation Report dated January 28, 2009 of the CIIS for appropriate action.

As aptly ruled by the Former First Division:

“As indicated in the body of the 2nd Indorsement, the 1st Indorsement is about the investigation report of the OIC-CIIS, Port of Manila dated January 28, 2009, with regard to the importation of aromatic hydrocarbon by Unioil Petroleum Phils., Inc./Oilink International Corporation. Said importation was found out to be petroleum oil and not as aromatic hydrocarbon as declared by the petitioner, thus, subject to excise tax.

The tenor of the 2nd Indorsement does not also indicate that respondent-Commissioner ordered the OIC-District Collector, Port of Limay, to issue a Warrant of Seizure and Detention (WSD) against the subject shipment. The subsequent issuance of a WSD by the OIC-District Collector of the Port of Limay was based on the investigation report and evidence presented to him.

To reiterate, respondent-Commissioner merely referred the investigation report to the OIC-Collector, Port of Limay, for appropriate action. Nowhere in the assailed 2nd Indorsement can it be shown that the same constitutes a final decision of the respondent-Commissioner.”



**The Petition For Review
Filed in C.T.A. Case No.
7879 Was Premature**

It is clear, therefore, that the Petition for Review filed in C.T.A. Case No. 7879 was premature, there being no decision yet rendered by the Commissioner of Customs, which finally and actually disposed and adjudicated the seizure of petitioner's Aromatic Hydrocarbon products. Thus, the Former First Division correctly ruled that it has no jurisdiction to entertain the Petition for Review.

It is only after the Commissioner of Customs has rendered a decision adverse to the petitioner that the latter may appeal said decision to the CTA under *Section 3(a)(4), Rule 4 of the 2005 Revised Rules of the CTA, as amended*.

Petitioner's contention that its right to due process of law was violated because the detention of the subject shipment happened a full day prior to the determination of probable cause by the Collector and the issuance of the WSD is likewise without merit.

Section 2301 of the TCCP, as amended, provides:

"SEC. 2301. Warrant for Detention of Property – Cash Bond. – Upon making any seizure, the Collector shall



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issue a warrant for the detention of the property; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector shall, with the approval of the Commissioner of Customs, surrender it upon the filing of a cash bond, in an amount to be fixed by him, conditioned upon the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case: Provided, That such importation shall not be released under any bond when there is a prima facie evidence of fraud in the importation of the article: Provided, further, That articles the importation of which is prohibited by law shall not be released under any circumstance whomsoever; Provided, finally, That 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 article.”

Pursuant to the above-quoted provision, notwithstanding the absence of a WSD, the Collector of Customs may already order the seizure of the subject imported products, and the WSD may be issued after said seizure was implemented.

As ruled by the Supreme Court in *Ponce Enrile vs. Vinuya*, 37 SCRA 381:

“*Papa v. Magno* likewise deserves to be cited. The opinion of Justice Zaldivar for the Court emphatically asserted the doctrine anew in the following language:

It is the settled rule, therefore, that the Bureau of Customs acquires exclusive jurisdiction over imported goods, for the



purposes of enforcement of customs law, from the moment the goods are actually in its possession or control, even if no warrant of seizure or detention had previously been issued by the Collector of Customs in connection with the seizure and forfeiture proceedings. In the present case, the Bureau of Customs actually seized the goods in question on November 4, 1966, and so from that date, the Bureau of Customs acquired jurisdiction over the goods for the purposes of the enforcement of the tariff and customs law, to the exclusion of the regular courts.”

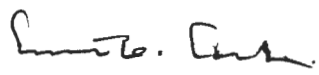
Finding no reversible error, we affirm the assailed Resolutions dated March 20, 2009 and June 22, 2009 issued by the Former First Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and, accordingly **DISMISSED** for lack of merit.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice

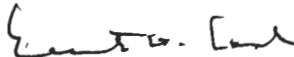

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice