L1B

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NEW FRONTIER SUGAR CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5347

COMMISSIONER OF CUSTOMS, represented herein by Hon. GUILLERMO L. PARAYNO, JR., and the District Collector of Customs, JESUS G. PEPITO, Port of Iloilo,
Respondent.

Promulgated:

JUN 19 1998

x - x

DECISION

Before Us for consideration is a petition for review seeking to annul and set aside the resolution promulgated on February 15, 1996 by a three-man hearing body constituted pursuant to Customs Special Order No. D-04-96, dated January 16, 1996, the dispositive portion of which, as modified by the respondent Commissioner, provides:

> "1. First demand for payment of penalty as instructed in the Commissioner's Memorandum dated 17 January 1996, i.e. 'payment of 20% penalty of the landed cost for failure to undergo the pre-shipment inspection at the Port of exportation'.
>
> 2. Upon failure by the importer to pay the penalty within (10) days from receipt of demand, proceed against the security/guarantee by initiating a seizure proceeding against the same and deposit immediately the guarantee in accordance with law in order to protect the interest of the government.
>
> SO ORDERED." (Exhibit "AY")

Petitioner is a domestic corporation with offices at the 9th floor of Rufino Center Bldg., 6784 Ayala Avenue, Makati City. It is duly registered with the Board of Investments on a non-pioneer status and has been granted incentives to modernize and rehabilitate its sugar mill under Certificate of Registration No. 93-452, dated January 28, 1994.

Hereunder are the antecedent facts.

On September 25, 1995, a contract of sale covering 15,000 metric tons of Thailand raw sugar was entered into by and between Ms. Margarita Chua Sia, buyer and President of herein petitioner corporation, and Osumo Nishihara of Maruha Corporation, a Japan based trading company, for and in behalf of the seller, Taiyo (U.K.) Limited.

On October 3, 1995, petitioner applied with the United Coconut Planter's Bank for a letter of credit for the above transaction and was issued L/C No. 95-61574-7 on October 5, 1995 after the payment of the advance import duty of P64,315,388.00.

In the meantime, said shipment of raw cane sugar arrived at the Port of Iloilo on October 4, 1995 on board the vessel M/V ALTAIR SS, Voyage No. 60, under Bill of Lading No. 1. Upon request of the petitioner, the shipment was allowed by the respondent Collector to be discharged and transferred to its bodega at Calinog, Iloilo under certain conditions.

On December 6, 1995, Director Ray M. Allas of respondent Commissioner's Customs Intelligence & Investigation Service ("CIIS" for short) issued Alert Order No. ACI/120695/09 on the subject shipment stating the following as the specific violation believed to have been committed, namely: "No CRF[1]. Violation of Joint Order No. 1-91[2]". (Exhibit "AX-2")

On December 8, 1995, the CIIS recommended to the respondent Collector the issuance of a Warrant of Seizure and Detention ("WSD" for brevity) against the shipment for violation of Joint Order No. 1-91 in relation to Section 2530 (f) of the Tariff and Customs Code of the Philippines, as amended ("TCCP" for short).

On December 18, 1995, the CIIS reiterated its recommendation of December 8, 1995 for the issuance of a WSD after receiving information from Mr. David Robinson of ***Societe Generale de Surveillance*** ("SGS" for short) Far East Limited that the shipment has not been subjected to pre-shipment inspection from its place of exportation.

On December 22, 1995, petitioner, through the representation of Ms. Rhodora P. Morales, wrote a letter to the respondent Collector (Exhibit "AA") and explained

---

1 Clean Report of Findings

therein the circumstances surrounding the lack of CRF, as follows:

x x x

> Conformably with item no. 6 of Annex "A" of CMO 9-95[3], hereunder is the explanation as to why Customs should not consider the aforesaid infraction of SGS rules and regulations (Lack of CRF) as intentional and not meant to circumvent the CISS4[4] under Joint Order 1-91.
>
> 1. Hereunder importer acted in good faith by complying with the requirements necessary for the issuance of the Import Advice [Notice] to serve as reference by SGS-Thailand to conduct the pre-shipment inspection.
>
> 2. The seller, Taiyo (U.K.) Ltd., which is based in London, acknowledged that they were aware of the SGS pre-shipment inspection requirements and, in fact, instructed their agent in Thailand to allow an authorized third party (United Asia Supplier Co. LTD) to inspect secure samples of subject sugar.
>
> 3. Importer was not advised by seller that the raw sugar ordered by the former was the one initially shipped-out to China. Moreover, the Thailand agent failed to advise the seller regarding the SGS Pre-shipment inspection thinking that the previous inspection and testing made by United Asia was all that was required (Please see annex A & B, Cert. of Quality and Weight).

x x x

---

3 Revised Procedures on the Tentative Release of Shipments lacking the required SGS-CRF
4 Comprehensive Import Supervision Scheme

On even date, Ms. Morales requested the respondent Collector for the tentative release of the shipment under Customs Memorandum Order ("CMO" for brevity) No. 9-95 stating that "the required SGS pre-shipment inspection was not undertaken due to miscommunication with the seller's agent in Thailand xxx" and that the "importation was done in good faith and that there was no intention to circumvent the CISS xxx". (Exhibit "AX-3")

The respondent Collector agreed and following the procedure laid down in CMO No. 9-95, a 100% examination of the shipment was conducted in the presence of Customs Examiner Hermane Olivido, SGS representatives Messrs. Raul Banderlipe and Noel Poblacion on December 29, 1995. Thereafter, Mr. Salvador Porras, Acting Chief of the Assessment Division of the Port of Iloilo, recommended to the respondent Collector the approval of the tentative release of the shipment.

On January 9, 1996, the CIIS filed an urgent opposition to the request of petitioner for tentative release on the ground that the latter failed to prove that its failure to obtain an import advice notice/CRF was unintentional.

On January 10, 1996, the respondent Commissioner, through an indorsement letter, directed the respondent Collector to resolve the Opposition of the CIIS on the request of the petitioner for tentative release within 72 hours from receipt of his order. In compliance, the respondent Collector submitted his Memorandum, dated January 15, 1996, to the respondent Commissioner (Exhibit "AQ"). The respondent Collector fully explained therein his findings that there was no intentional circumvention of the CISS requirement because the failure to subject the shipment to SGS pre-shipment inspection was purely attributable to the fault of the shipper.

In the same memorandum, the respondent Collector tackled on the merits of issuing a WSD or tentative release for the shipment, in this wise:

x x x

> 1. Under Section 4 (4.1;4.2 and 4.3) CMO 9-95 in relation to Step 3, items 3.1 to 3.3, FED[5] shall allow the tentative release or recommend the seizure of the goods. Warrant of Seizure and Detention (WSD) is appropriate when there is a deliberate circumvention of the CISS. CISS is deliberately circumvented if (1) there is misdeclaration, under-valuation or miscissification evidencing prima facie fraud; or (2) if the failure to secure the IAN was intentional or (3) consignee is (a) recidivist. In the present, none of the three cases exists per evaluation of our Acting Chief, Assessment Division (equivalent of the FED) to which I concur after reviewing the case myself, to warrant the issuance of WSD, hence, tentative release is allowable.

x x x

5 Formal Entry Division, Bureau of Customs

On the same date, January 15, 1996, the respondent Collector, likewise, sent a memorandum to the respondent Commissioner informing him that on January 9, 1996, petitioner posted a postdated guarantee/security check with no. 184594 in the amount of P234,998,950.90, dated February 9, 1996, and recommending that the imposition of penalty be dispensed with unless the SGS will not issue the required CRF.

The following day, the respondent Commissioner created the abovementioned hearing body to resolve the issue of whether or not the failure to undergo pre-shipment inspection was intentional or not. Pending its resolution, the respondent Commissioner issued on January 17, 1996, a memorandum (Exhibit "AS") ordering the tentative release of the shipment pursuant to CMO No. 9-95. The respondent Commissioner also stated in said memorandum that nothing in his order shall be construed to prevent the importer from appealing the 20% penalty to the Secretary of Finance which office issued Customs Administrative order ("CAO" for short) No. 4-94 on penalty for lack of CRF.

On January 18, 1996, SGS Manila Liaison Office issued CRF No. THL 017904 covering the shipment.

On February 15, 1996, the assailed resolution was issued by the hearing body and approved with amendments by the respondent Commissioner.

Petitioner filed a motion for reconsideration of said resolution but the same was denied by the hearing body on March 27, 1996. Then on April 2, 1996, the Bureau of Customs of the Port of Iloilo deposited the security/guarantee check issued by the petitioner (TSN, June 19, 1997, p. 113), to which the latter responded by issuing a "**STOP PAYMENT**" order to the drawee bank.

On April 3, 1996, petitioner, through counsel, received a letter from the respondent Collector, dated March 29, 1996, formally demanding payment of the penalty indicated in the questioned resolution of the hearing body in the amount of ₱41,858,550.00 with the warning that a failure to pay said penalty within ten (10) days from receipt of the letter, respondent's Bureau will be constrained to proceed against the security/guarantee and to hold releases of petitioner's subsequent shipment of sugar. (Annex "C" of Petition). As it happened, the District Collector of Iloilo held the release of some 9,948,615 metric tons of sugar with a CRF value of ₱78,045,981.82 subsequently imported by petitioner, with the instruction to sell it at public auction in satisfaction of the 20% penalty.

On April 10, 1996, petitioner filed the instant petition for review with prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order.

At bar, petitioner asserts in its petition that the memorandum of the respondent Commissioner, dated January 17, 1996, is untenable in that it orders the payment of a 20% penalty of the landed cost of the shipment for failure to undergo the pre-shipment inspection.

Petitioner further avers that said memorandum was anchored on the provisions of Joint Order No. 1-91 which upon close perusal does not impose any penalty for a shipment that has come into the country without the required SGS-CRF issued at the port of exportation; that the provision on "automatic seizure" of shipments without SGS-CRF under paragraph 12 of said Joint Order requires the issuance of a WSD by the District Collector of Customs as provided in Section 2301 of the TCCP; that the shipment was never issued a WSD by the respondent Collector, despite the adamant recommendation of the CIIS because of the former's finding that the lack of CRF was not intentional and not attended by fraud; and that, if the basis of the respondents in insisting the collection of the 20% penalty is anchored upon CAO No. 4-94 which deals with settlement of seizure cases, the same is not applicable because no WSD was ever issued by the respondent Collector.

Petitioner adds that there is no clear provision of the law which imposes fine on its supposed infraction and that a fine being penal in nature, it should be construed in its favor and against the respondents. It points out further that the eventual issuance of the CRF by the SGS which was used as a basis for the dutiable value for the shipment did not cause any loss to the government. It invokes thus the time-honored maxim in Customs that government should collect only what is right - not one centavo less nor one centavo more.

Petitioner emphasizes that the respondent Collector acted contrary to law and in grave abuse of authority when he prematurely deposited the postdated check on April 2, 1996. It elaborates that a perusal of the respondent Collector's letter, dated March 29, 1996, which was officially received by mail on April 3, 1996 only, gave a ten-day grace period upon receipt thereof within which petitioner shall pay the 20% penalty, but as it turned out, the respondent Collector ignored the period and deposited the check earlier.

In their Answer, the respondents contend that paragraph 12 of Joint Order No. 1-91, in relation to Section 2530 (f) of the TCCP, plainly provides that a violation is incurred regardless of the absence of fault on the part of the importer when his shipment has not been subjected to pre-shipment inspection; that to avoid delays in the processing and releasing of shipments arising from the lack of SGS-CRF in relation to Joint Order No. 1-91, CMO No. 9-95 was issued wherein the payment of the 20% penalty is one of the terms and conditions contained therein; and that in view of petitioner's failure to satisfy the penalty, the respondent Collector merely exercised his prerogative under Section 1508 of the TCCP, which deals on the authority of the Collector of Customs to hold the delivery or release of imported articles whenever any importer has an outstanding and demandable account with the Bureau of Customs.

During the initial proceedings of herein case, the respondent filed a motion to dismiss on the ground that there is yet no final decision of the respondent appealable to this Court. After noting the main and supplemental comment and or opposition of the petitioner and the memorandum of the respondent in support of their motion, as well as the omnibus reply of the petitioner, this Court issued its Resolution, dated July 9, 1996, denying said motion. Meanwhile, petitioner also filed a motion for the issuance of a temporary restraining order on June 24, 1996 which was opposed in writing by the respondent on June 26, 1996. Such motion was eventually granted by this Court per Resolution, dated June 26, 1996. Likewise, this Court issued Resolution, dated August 1, 1996, pertaining to the much earlier motion of the petitioner for the suspension of collection of fine and to order tentative liquidation. Said resolution granted petitioner's motion and accordingly, suspended the auction of the shipment, and ordered its release to the petitioner subject to the deposit of a cash bond.

A motion for reconsideration was filed by the petitioner on August 15, 1996, asking for the posting of a surety bond instead of a cash bond. Respondents opposed the same by invoking Republic Act No. 7651 which allegedly allows release of goods under cash bond only.

Almost at the same time, respondents filed a motion for reconsideration of this Court's resolution on the motion to dismiss by arguing in support of their position that this Court has acquired no jurisdiction over the case, inasmuch as seizure proceedings were being conducted continuously at the level of the respondent Collector. Petitioner, on the other hand, opposed said motion by contending that the modifications made by the respondent Commissioner in the resolution promulgated by the hearing body left no doubt that he has made a decision which is appealable to this Court.

Both motions were resolved in a Resolution, dated September 26, 1996, wherein the motion for the reconsideration of the denial of respondent's motion to dismiss was denied on the ground that no new matters have been raised therein; and the motion for reconsideration for a change to surety bond from a cash bond was granted on account of the ruling of the Honorable Court of Appeals in **Commissioner of Customs vs. Hon. Court of Tax Appeals and Milwaukee Industries Corp.**, CA-G.R. SP No. 39354, August 29, 1996 (CTA Case No. 5160) that Republic Act No. 7651 applies exclusively at the level of the Bureau of Customs. Finally, this Court accepted petitioner's GSIS Surety Bond with No. G[16] GIF -27358 in the amount of P83,717,100.00 per Resolution, dated December 2, 1996.

Records show that both parties filed their respective memoranda. In it, petitioner asseverated on the provisions of Section 2307 of the TCCP, as amended by Executive Order No. 38, on the settlement of a case by payment of fine (from 20% to 80% of the landed cost) or redemption of forfeited property. Petitioner points out that this provision of law speaks of a situation where there is a WSD and the importer wishes to settle the case while pending. Since no WSD has been issued against the shipment, petitioner asserts that it cannot avail of such settlement. Moreover, it contends that imposition of the 20% penalty, pursuant to CAO No. 4-94, has no legal basis because the schedule of fines contained therein is imposable only on matters involving settlement of seizure cases under Section 2307 of the TCCP, as amended.

In addition, petitioner claims that the issuance at a later date of SGS-CRF on its shipment had the effect of full compliance with Joint Order No. 1-91 and cured all infirmities under CMO No. 9-95; and that the respondent Collector's act of withholding the release of petitioner's subsequent shipment of raw sugar in the quantity of 9,948.7 metric tons with a value of P78,045,981.52, is unconstitutional because such other shipment has no relation whatsoever to herein controversy.

Respondents, in their memorandum, conclude that petitioner has an outstanding and demandable account with respect to the non-payment of the penalty. Thus, they argue that the Bureau of Customs has the right to withhold the shipment pursuant to Section 1508 of the TCCP. They also contend that the violation for lack of CRF cannot be cured by the subsequent issuance of the SGS-CRF as such violation has already been consummated.

Based on the preceding narration, the issues presented before this Court are the following, to wit:

> 1. Whether or not the issuance of a WSD is essential to the validity of a seizure proceeding;
>
> 2. Whether or not the imposition of the 20% penalty on petitioner's shipment pursuant to the provisions of CAO No. 4-94 is justified;
>
> 3. Whether or not the later issuance of the CRF over petitioner's shipment under CMO No. 9-95 had the effect of full compliance with Joint Order No. 1-91;
>
> 4. Whether or not the deposit of the security/guaranty check posted by the petitioner by the respondent Collector on April 2, 1996 was proper and legal;
>
> 5. Whether or not the withholding of petitioner's subsequent shipment of raw sugar is tainted with constitutional infirmity.

After a painstaking scrutiny of the attending facts, the disquisition of the parties, the applicable laws, rules and regulations and jurisprudence in the case at bar, this Court rules in favor of the petitioner.

As regards the first issue, this Court is of the considered opinion that a WSD is essentially a condition sine qua non, before any seizure proceeding can be formally initiated. Sections 2301 of the TCCP, as amended, is explicit enough in that it requires the Collector to issue a WSD upon making any seizure.

Likewise, Section 2303 of the same Code provides that the "Collector shall give the owner or importer of the property or his agent a written notice of the seizure and shall give him an opportunity to be heard in reference to the delinquency which was the occasion of such seizure." Said written notice of seizure undoubtedly comprises a WSD.

This Court need not emphasize the constitutionally enshrined right to procedural due process of any person under investigation especially if it will cause the person his life or property. Sections 2301 and 2303 clearly lay down the procedure to be observed in a seizure case, that is, a WSD must be issued upon making any seizure and that a written notice of such seizure be served upon the owner or importer or his agent. None of these were followed in the case at bar. In fact, the records bear that the respondent Collector stood his ground in refusing to issue a WSD over the shipment despite the insistence of the CIIS to the contrary.

Hence, it can be categorically stated that no valid seizure proceeding ever attended petitioner's case. Although paragraph 12 of Joint order No. 1-91 mentions "automatic seizure" of shipments lacking the CRF, herein respondents should not miscontrue it as a roving commission to dispense with the issuance of a WSD or a written notice of such seizure. With this pronouncement, the disposition of the other issues at bar readily falls into place.

The second issue dwells on the imposition of the 20% penalty prescribed under paragraph II-C of CAO No. 4-94 over petitioner's shipment. A cursory reading of the subject matter of said CAO discloses the following, to wit:

> SUBJECT: Schedule of fines to be imposed in the settlement of seizure cases pending hearing pursuant to Section 2307 of the Tariff and Customs Code, as amended by Executive Order No. 38.

It is to be readily observed that the aforequoted subject of said CAO pertains to fines imposed on seizure cases. Inasmuch as the instant case has not been put under a valid seizure as adverted to above, the imposition of the 20% penalty under CAO 4-94 is outright improper and without legal basis. The problem with respondent is that in its desire to give more teeth to the administrative requirement for the production of a Clean Report of Findings (CRF) from the SGS, it overlooked one fundamental principle in law - that no fine, surcharge, forfeiture or any penalty may be imposed except in pursuance of a provision of law. In the instant case, the closest provision respondent could cite is section 2307 of the Tariff and Customs Code as implemented by CAO 4-94, without realizing that the same pertains only to seizure cases. Under the provisions imposing fine found in Sections 2505 to 2529 of the same Code, not one pertains to non-production of CRF. The Secretary of Finance, Secretary of Trade and Industry and the Governor of the Central Bank in issuing the Joint Order No. 1-91, which serves as the basis of the requirement for the production of a CRF, did not provide for the imposition of fine or other penalties maybe because they realize that the imposition of penalties is a legislative prerogative.

The non-production of CRF by itself does not give rise to any penalty but may serve as a basis to hold and to investigate the particular shipment which may lead to findings of undervaluation, misdeclaration or misclassification for which the law provides the corresponding penalty such as surcharge, fine or forfeiture under Sections 2503, 2530-2536 of the TCC. These offenses were not shown in the records of the case. On the contrary, there was this finding by the respondent that the non-production of the CRF was not intentional. The mistake or error was found to be committed by the supplier without prior knowledge on the part of the petitioner. In fact, a CRF was later on produced and the discrepancy was not enough to constitute undervaluation under Sections 2503 of the said Code. The petitioner was only required by the respondent to pay additional duties and taxes corresponding to the difference of 4.79% in valuation.

On the third issue, this Court agrees with petitioner's view that the issuance of the CRF over its shipment under the provisions of CMO No. 9-95 had the effect of full compliance with the provisions of Joint Order No. 1-91. Respondents' argument that the CRF being referred to in Joint Order No. 1-91 is the one done at the port of exportation is too restrictive and therefore incorrect. Paragraph 12 of Joint Order No. 1-91 states:

x x x

> 12. No Customs Entry shall be filed or accepted or any shipment released in respect of any goods which require a CRF as provided for by this Joint Order where the importer is unable to produce to the Bureau of Customs the authenticated customs copy of the CRF. With or without fault on the part of the importer, such goods shall be subject to automatic seizure by the Bureau of Customs. The Seller is therefore warned against the shipment of goods **which have not been inspected or for which a CRF has not been issued**.

x x x

(Underscoring and emphasis supplied)

The foregoing provision makes no qualification as to what kind of CRF is required. It does not say whether it is the CRF that has been issued at the port of exportation prior to arrival of the goods or the CRF that has been issued pursuant to CMO No. 9-95. Where the law does not distinguish, we should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos.* What is important is that an inspection and a CRF is actually issued to a particular shipment of goods. Thus, even if this Court considers, *ex gratia argumenti*, that the shipment of the petitioner may have been subjected to automatic seizure, the eventual issuance of the CRF covering its shipment cured all deficiencies.

In conjunction with the above observation, this Court notes that CMO No. 9-95 offers a clear remedy to petitioner's shipment from not being subjected to the "automatic seizure" clause provided in Joint Order No. 1-91. Paragraphs III.1, III.3.1, III.3.2 and V.1-Step 5 of CMO No. 9-95 provide:

x x x

> III. GENERAL PROVISIONS
>
> 1. Shipments requiring Pre-shipment inspections under the CISS which arrived in the country and entered in a customhouse but without the requisite CRF (NON-CRF SHIPMENTS or NCS) must be treated as shipments made in circumvention of CISS and therefore seized pursuant to CMO 71-90, <u>**unless otherwise cleared**</u> following the provisions of this memorandum order.

x x x

> 3.1 If, on the basis of the Joint inspection of SGS/BOC Examiner/Appraiser's report, a discrepancy is found or established, **tentative release shall only be allowed if the uncovered discrepancy or violation does not merit the issuance of a Warrant of Seizure and Detention (WSD)**, otherwise the matter shall be referred to the District Collector.
>
> 3.2 **If no discrepancy is found except the lack of the requisite SGS-CRF, the tentative release of the shipment shall be allowed**.
>
> x x x
>
> Step 5:
>
> SGS-MLO shall, upon receipt of the required documents and samples, forward the same by airfreight to the SGS affiliate on the country of exportation to process SGS-CRF pertaining to the said shipment using the data and samples available **as if inspection has taken place**, and transmit the electronic data to SGS-MLO **for issuance of the SGS-CRF**.
>
> x x x
>
> (Underscoring and emphasis supplied)

A cursory review of the aforequoted provisions of CMO No. 9-95 would show that the lack of SGS-CRF, albeit a discrepancy, does not merit the issuance of a WSD. This explains why the respondent Collector did not issue a WSD after establishing to his satisfaction that petitioner's lack of CRF on its shipment was not in deliberate circumvention of the CISS (Exhibit "AQ", supra). Absent the issuance of a WSD, the "automatic seizure" clause in Joint Order No. 1-91 did not come into operation.

Most important of all, the aforequoted provision on paragraph V-1-Step 5 states that the processing of the SGS-CRF by the SGS affiliate in the country of exportation shall be deemed "as if inspection has taken place" and that the issuance of the SGS-CRF shall be done by SGS-MLO[6].

Verily, the issuance of the CRF over petitioner's shipment under CMO No. 9-95 satisfied the inspection and the CRF required under paragraph 12 of Joint Order No. 1-91. Such issuance of the CRF *cleared* the shipment from automatic seizure, as provided under the abovequoted III.1 on General Provisions of CMO No. 9-95.

Going into the fourth issue, this Court sees the deposit of the postdated check of the petitioner on April 2, 1996 as improper and without legal basis. The respondent Collector is simply legally and morally bound by the statements contained in his letter of March 29, 1996, namely, petitioner's failure to pay the penalty within the period of ten (10) days from receipt of said letter will constrain him to proceed against the security/guarantee check. Herein petitioner is therefore within its right when it issued a "STOP PAYMENT" order on

---

6 Societe Generale de Surveillance-Manila Office

the check. Moreover, the amount of the guarantee check for P234,998,950.90 appears unconscionable or unreasonable considering that the amount in dispute is only P41,858,550.

As regards the last issue, this Court believes that the respondent Collector acted beyond his mandate under Section 1508 of the TCCP when he withheld petitioner's subsequent shipment of raw sugar. Said section gives authority to the District Collector to hold the delivery of any article imported or consigned to an importer only when such importer has an outstanding and demandable account with the Bureau of Customs but not when such account is contested or claim unsettled. Furthermore, the respondent Collector is manifestly wrong in withholding petitioner's subsequent shipment because it was known to him that he deposited the check prematurely before the lapse of the ten-day grace period given by him. It was therefore his fault that he deposited the security/guaranty check before its due date.

It is worthy to note also that there is no record in the case at bar to show that the respondent Collector ever reiterated his demand for the payment of the penalty after the lapse of the ten-day period. It can only mean that there is really no outstanding and demandable account to speak of in the first place. The fine which is the subject matter of this case is precisely the one being questioned by the petitioner. The liability thereof by the petitioner has yet to be determined by this Court.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, the decision to impose a 20% penalty on petitioner's subject shipment of raw sugar is hereby **REVERSED and SET ASIDE**. The GSIS Surety Bond with No. G [16] GIF 027358 posted by the petitioner before this Court in the amount of P83,717,100.00 is hereby **CANCELLED** and **RELEASED** of its undertaking.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals