

SECOND DIVISION

[G.R. No. 163055, June 11, 2014]

**THE COMMISSIONER OF CUSTOMS & THE DISTRICT COLLECTOR
OF CUSTOMS FOR THE PORT OF ILOILO, PETITIONERS, VS. NEW
FRONTIER SUGAR CORPORATION, RESPONDENT.**

DECISION

PEREZ, J.:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 29 March 2004 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 48842 which affirmed the Decision and Resolution dated 19 June 1998 and 23 July 1998, respectively, of the Court of Tax Appeals (CTA)^[2] in C.T.A. Case No. 5347.

The Facts

As both found by the trial court and appellate court, the factual antecedents^[3] of the case are as follows:

Petitioners are the duly appointed Commissioner of Customs, and the District Collector of Customs for the Port of Iloilo. Respondent, on the other hand, is a domestic corporation with office address 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 28 January 1994.

On 25 September 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 respondent, and Osumo Nishihara of Maruha Corporation, a Japan based trading company, for and in behalf of the seller, Taiyo (U.K.) Limited.

On 3 October 1995, respondent applied with the United Coconut Planters Bank for a letter of credit for the above transaction and was issued L/C No. 95-61574-7 on 5 October 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 4 October 1995 on board the vessel M/V ALTAIR SS, Voyage No. 60, under Bill of Lading No. 1. Upon request of the respondent, the shipment was allowed by petitioner District Collector (Collector) to be discharged and transferred to its bodega at Calinog, Iloilo under certain conditions.^[4]

On 6 December 1995, Director Ray M. Allas of the Customs and Intelligence & Investigation Service (CIIS) issued Alert Order No. ACI/120695/09 on the subject shipment declaring that it violated *Joint Order No. 1-91* for lack of Clean Report of

Findings (CRF). Thus, a Warrant of Seizure and Detention (WSD) against the shipment was recommended for violation of said *Joint Order*, in relation to Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP).^[5]

On 22 December 1995, respondent wrote the petitioner Collector explaining that its lack of CRF should not be construed as intentional there being good faith on its part in complying with the requirements for the issuance of the Import Advice Note (IAN). Further, respondent explained that Taiyo (U.K.) Limited was aware of the *Societe Generale de Surveillance* (SGS) pre-shipment inspection requirements and instructed its agent in Thailand to allow an authorized third party, United Asia Supplier Co. Ltd. (United Asia), to inspect the samples of sugar. Respondent likewise clarified that they were not advised by the seller that the sugar ordered was initially shipped-out to China and that the Thailand agent failed to advise it of the SGS pre-shipment inspection under the impression that the previous inspection and testing made by United Asia would suffice.^[6]

In view thereof, respondent requested for the tentative release of the shipment on the ground that the SGS pre-shipment inspection was not undertaken due to miscommunication and it was without intention to circumvent the Comprehensive Import Supervision Scheme (CISS). Petitioner Collector approved such request and the shipment was thereafter tentatively released. The CIIS however opposed the tentative release insisting that respondent was not able to prove that its failure to obtain a CRF was unintentional. Petitioner Commissioner of Customs (Commissioner) then directed the petitioner Collector to resolve the opposition of the CIIS. It was found out that the failure to secure CRF was due to the fault of the shipper and it was unintentional on the part of respondent; hence, there was no need to issue a WSD.^[7]

Upon respondent's issuance and submission of a post-dated guarantee/security check in the amount of P234,998,950.90, petitioner Collector recommended to the petitioner Commissioner that the imposition of penalty be dispensed with unless the SGS will not issue the required CRF. Petitioner Commissioner then created a three-man hearing body to resolve the issue on whether the lack of CRF was intentional or not, as ordered in Customs Special Order No. D-03-96 dated 16 January 1996.^[8]

Pending said hearing, SGS-Manila Liaison Office issued on 18 January 1996 CRF No. THL017904 covering the subject shipment. Eventually, the three-man hearing body issued a Resolution dated 15 February 1996, the dispositive portion of which is quoted hereunder as follows:

WHEREFORE, in view of the foregoing and subject to the approval of the Commissioner of Customs, the District Collector of Customs, Port of Iloilo, is hereby ordered to initiate a seizure proceeding against the security/guarantee put up by NSFC (respondent herein) to secure the tentative release of the subject shipment for the imposition of appropriate penalty pursuant to CAO No. 4-94 and the collection of proper duties, taxes, penalties and other charges.^[9]

Afterwards, the aforesaid Resolution was approved by the petitioner Commissioner with the following handwritten modifications:

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"; and

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.^[10]

Respondent filed a Motion for Reconsideration of the said Resolution but the same was denied on 27 March 1996. Then, on 29 March 1996, petitioner Collector sent a demand letter to respondent for the payment of the twenty percent (20%) penalty within ten (10) days from its receipt, which the latter actually received on 3 April 1996. However, without waiting for the lapse of the ten-day grace period, the Bureau of Customs of the Port of Iloilo immediately deposited the security check on 2 April 1996, prompting respondent to order for a stop payment of said check.^[11]

Consequently, petitioner Collector demanded from respondent the payment of penalty indicated in the subject Resolution amounting to P41,858,550.00. Likewise, the subsequent shipment of 9,948,615 metric tons of raw sugar by respondent was withheld by petitioner Collector for the purpose of being sold at public auction to cover for the 20% penalty.^[12]

Thereafter, on 10 April 1996, respondent filed a Petition for Review with prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order (TRO) before the CTA, docketed as C.T.A. Case No. 5347.^[13]

The Ruling of the CTA

In a Decision dated 19 June 1998,^[14] the CTA granted respondent's Petition and accordingly reversed and set aside the Decision of the petitioner Commissioner to impose a 20% penalty on respondent's subject shipment, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, the decision to impose a 20% penalty on [respondent] subject shipment of raw sugar is hereby **REVERSED** and **SET ASIDE**. The GSIS Surety Bond with No. G 16 GIF 027358 posted by the [respondent] before this Court in the amount of P83,717,100.00 is hereby **CANCELLED** and **RELEASED** of its undertaking.^[15]

The CTA based its ruling on the following factual and legal findings: (1) that since there was no valid seizure proceeding ever conducted by petitioners against respondent's case, it therefore failed to comply with Section 2301 of the TCCP, as amended, which requires the Collector to issue a WSD upon making any seizure, and also with Section 2303 of the same, which provides the need of a prior written notice of seizure and opportunity to be heard on the part of the owner or importer in reference to the alleged delinquency, a clear violation of respondent's constitutional right to procedural due process;^[16] (2) that since there was no valid seizure as

adverted to above, the imposition of the 20% penalty under Customs Administrative Order (CAO) No. 4-94 is outright improper and without any legal basis; (3) that the subsequent issuance of the CRF over respondent's shipment under the provisions of Customs Memorandum Order (CMO) No. 9-95 satisfied the inspection and the CRF required under paragraph 12 of *Joint Order No. 1-91* considering that it cleared the said shipment from automatic seizure. Nonetheless, even if the subject shipment of respondent may have been subjected to an alleged automatic seizure, the eventual issuance of the CRF covering the same shipment cured all deficiencies;^[17] (4) that respondent's act of issuing a "STOP PAYMENT" order was justified considering petitioners' act of depositing the post-dated guarantee/security check being improper and without any legal basis;^[18] and (5) that petitioner Collector acted beyond his mandate under Section 1508 of the TCCP when he withheld respondent's subsequent shipment of raw sugar considering that there was still no outstanding and demandable amount (penalty of fine) to be paid. The fine which is the subject matter of the instant case was precisely the one being questioned by respondent; hence, its liability has yet to be determined.^[19]

Subsequently, on 23 July 1998, the CTA denied petitioners' Motion for Reconsideration for failure to raise any new matter which has yet to be considered and passed upon in its assailed 19 June 1998 Decision.^[20]

Aggrieved, and following the rules on court hierarchy then prevailing, petitioners appealed to the CA by filing a Petition for Review pursuant to Rule 43 of the 1997 Rules of Civil Procedure, docketed as CA-G.R. SP No. 48842.

The Ruling of the CA

The CA affirmed^[21] both the aforesaid Decision and Resolution rendered by the CTA in C.T.A. Case No. 5347, pronouncing that seizure of goods starts with the issuance of a WSD, being a part of the procedural due process, to which respondent is entitled to. Without it, respondent will then be deprived of its right to avail of the tentative release of the shipment which is expressly allowed under the conditions set forth in CMO No. 9-95.

In addition, the appellate court ruled that respondent cannot be faulted in ordering the stop payment of its guarantee/security check because it was deposited by petitioners on 2 March 1996, or exactly six (6) days ahead of respondent's deadline to pay the alleged 20% penalty. It failed to consider that before the lapse of the given period, the Bureau of Customs had no right to hold the value of the check against respondent. More so, since there was already the subsequent issuance of the CRF on 18 January 1996 by the SGS Manila Liaison, respondent in effect could not have violated any customs laws which would render it liable to pay for the 20% penalty.

Lastly, while it may be argued that the CRF is required to be issued before the shipment of the goods, the late issuance of the same to respondent amounts to substantial compliance with the provisions of *Joint Order No. 1-91*. The purpose for which the CRF is required has already been served since the imported goods were already inspected by the SGS. The CA therefore concluded that if the belated issued CRF will be ignored, then it will work against all the procedures conducted to determine the propriety of issuing the late CRF.

Not satisfied, petitioners are now in quest for redemption before this Court, raising that the CA committed serious and reversible error in ruling, that: (a) the issuance of a WSD was necessary; (b) the imposition of the 20% penalty on respondent's shipment was not justified; (c) the later issuance of the CRF over the subject shipment had the effect of full compliance with *Joint Order No. 1-91*; and (d) the deposit of respondent's check by petitioners was improper and without legal basis.

The Issue

The core issue for the Court's consideration is whether or not respondent has violated paragraph 12 of *Joint Order No. 1-91*, in relation to paragraph (f), Section 2530 of the TCCP, as amended, for failure to submit the subject raw cane sugar shipment to pre-shipment inspection and to present the corresponding CRF resulting therefrom. Consequently, if respondent indeed violated said provision, the question of the imposition of the 20% penalty pursuant to CAO No. 4-94, on respondent's subject shipment, then arises.

Our Ruling

We find the petition unmeritorious.

Prefatorily, in accordance with the pertinent customs laws at the time of the arrival of the subject shipment of this case, it must be pointed out that importers, such as respondent herein, are duty-bound to comply with the provisions of the CISS,^[22] implemented by *Joint Order No. 1-91*,^[23] particularly as to the requirement of a pre-shipment inspection of the quality, quantity, and price of the imports coming into the Philippines to be conducted at the country of export. Notably, the pre-shipment inspection was intended to prevent the possibility of the undervaluation, misdeclaration, and overvaluation of imports shipped to our country which may defraud the Philippine Government of revenues.^[24]

The aforesaid scheme aims to ensure the quality and quantity specifications of consignments, and achieved through advance cargo clearance and supplying the country's Bureau of Customs with accurate information about the quality and specification of bulk and break bulk cargo.^[25] In other words, the pre-shipment inspection requirement simply helps the Governments around the world in protecting their import revenues, facilitate trade, and minimize the risk of illegal imports.^[26]

Thereafter, upon inspection and determination that the subject shipment is in order, a corresponding CRF shall be issued by the SGS. Only then may the imports be allowed in our country for release, after compliance with other equally significant requirements, such as but not limited to, filing of import entry and payment of duty.

In the case at bench, it is apropos to look into the allegation that, as stated in Alert Order No. A/CI/120695/09, respondent violated *Joint Order No. 1-91*, which implements the CISS, particularly paragraph 12 thereof, to wit:

12. No Custom Entry shall be filed or accepted or any shipment released in respect of any goods which require a CRF as provided