

SECOND DIVISION

[G.R. No. 187425, March 28, 2011]

COMMISSIONER OF CUSTOMS, PETITIONER, VS. AGFHA INCORPORATED, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the February 25, 2009 Decision^[1] of the Court of Tax Appeals En Banc (*CTA-En Banc*), in CTA EB Case No. 136, which affirmed the October 18, 2005 Resolution^[2] of its Second Division (*CTA-Second Division*), in CTA Case No. 5290, finding petitioner, the Commissioner of Customs (*Commissioner*), liable to pay respondent AGFHA Incorporated (*AGFHA*) the amount of US\$160,348.08 for the value of the seized shipment which was lost while in petitioner's custody.

On December 12, 1993, a shipment containing bales of textile grey cloth arrived at the Manila International Container Port (*MICP*). The Commissioner, however, held the subject shipment because its owner/consignee was allegedly fictitious. AGFHA intervened and alleged that it was the owner and actual consignee of the subject shipment.

On September 5, 1994, after seizure and forfeiture proceedings took place, the District Collector of Customs, MICP, rendered a decision^[3] ordering the forfeiture of the subject shipment in favor of the government.

AGFHA filed an appeal. On August 25, 1995, the Commissioner rendered a decision^[4] dismissing it.

On November 4, 1996, the CTA-Second Division reversed the Commissioner's August 25, 1995 Decision and ordered the immediate release of the subject shipment to AGFHA. The dispositive portion of the CTA-Second Division Decision^[5] reads:

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **GRANTED**. Accordingly, the decision of the respondent in Customs Case No. 94-017, dated August 25, 1995, affirming the decision of the MICP Collector, dated September 5, 1994, which decreed the forfeiture of the subject shipments in favor of the government, is hereby **REVERSED** and **SET ASIDE**. Respondent is hereby **ORDERED** to effect the immediate **RELEASE** of the subject shipment of goods in favor of the petitioner. No costs.

SO ORDERED.

On November 27, 1996, the CTA-Second Division issued an entry of judgment declaring the above-mentioned decision final and executory.^[6]

Thereafter, on May 20, 1997, AGFHA filed a motion for execution.

In its June 4, 1997 Resolution, the CTA-Second Division held in abeyance its action on AGFHA's motion for execution in view of the Commissioner's appeal with the Court of Appeals (CA), docketed as CA-G.R. SP No. 42590 and entitled "*Commissioner of Customs v. The Court of Tax Appeals and AGFHA, Incorporated.*"

On May 31, 1999, the CA denied due course to the Commissioner's appeal for lack of merit in a decision,^[7] the dispositive portion of which reads:

WHEREFORE, the instant petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the Commissioner of Customs is hereby ordered to effect the immediate release of the shipment of AGFHA, Incorporated described as "2 x 40" Cont. No. NYKU-6772906 and NYKU-6632117 STA 197 Bales of Textile Grey Cloth" placed under Hold Order No. H/CI/01/2293/01 dated 22 January 1993.

No costs.

SO ORDERED.

Thereafter, the Commissioner elevated the aforesaid CA Decision to this Court via a petition for review on *certiorari*, docketed as G.R. No. 139050 and entitled "*Republic of the Philippines represented by the Commissioner of Customs v. The Court of Tax Appeals and AGFHA, Inc.*"

On October 2, 2001, the Court dismissed the petition.^[8]

On January 14, 2002, the Court denied with finality the Commissioner's motion for reconsideration of its October 2, 2001 Decision.

On March 18, 2002, the Entry of Judgment was issued by the Court declaring its aforesaid decision final and executory as of February 5, 2002.

In view thereof, the CTA-Second Division issued the Writ of Execution, dated October 16, 2002, directing the Commissioner and his authorized subordinate or representative to effect the immediate release of the subject shipment. It further ordered the sheriff to see to it that the writ would be carried out by the Commissioner and to make a report thereon within thirty (30) days after receipt of the writ. The writ, however, was returned unsatisfied.

On July 23, 2003, the CTA-Second Division received a copy of AGFHA's Motion to Show Cause dated July 21, 2003.

Acting on the motion, the CTA-Second Division issued a notice setting it for hearing on August 1, 2003 at 9:00 o'clock in the morning.

In its August 13, 2003 Resolution, the CTA-Second Division granted AGFHA's motion and ordered the Commissioner to show cause within fifteen (15) days from receipt of said resolution why he should not be disciplinary dealt with for his failure to comply with the writ of execution.

On September 1, 2003, Commissioner's counsel filed a Manifestation and Motion, dated August 28, 2003, attaching therewith a copy of an Explanation (With Motion for Clarification) dated August 11, 2003 stating, *inter alia*, that despite diligent efforts to obtain the necessary information and considering the length of time that had elapsed since the subject shipment arrived at the Bureau of Customs, the Chief of the Auction and Cargo Disposal Division of the MICP could not determine the status, whereabouts and disposition of said shipment.

Consequently, AGFHA filed its Motion to Cite Petitioner in Contempt of Court dated September 13, 2003. After a series of pleadings, on November 17, 2003, the CTA-Second Division denied, among others, AGFHA's motion to cite petitioner in contempt for lack of merit. It, however, stressed that the denial was without prejudice to other legal remedies available to AGFHA.

On August 13, 2004, the Commissioner received AGFHA's Motion to Set Case for Hearing, dated April 12, 2004, allegedly to determine: (1) whether its shipment was actually lost; (2) the cause and/or circumstances surrounding the loss; and (3) the amount the Commissioner should pay or indemnify AGFHA should the latter's shipment be found to have been actually lost.

On May 17, 2005, after the parties had submitted their respective memoranda, the CTA-Second Division adjudged the Commissioner liable to AGFHA. Specifically, the dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, INC. for the value of the subject shipment in the amount of ONE HUNDRED SIXTY THOUSAND THREE HUNDRED FORTY EIGHT AND 08/100 US DOLLARS (US\$160,348.08). The Bureau of Custom's liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.

The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.

SO ORDERED.^[9]

On June 10, 2005, the Commissioner filed his Motion for Partial Reconsideration arguing that (a) the enforcement and satisfaction of respondent's money claim must be pursued and filed with the Commission on Audit pursuant to Presidential Decree

(P.D.) No. 1445; (b) respondent is entitled to recover only the value of the lost shipment based on its acquisition cost at the time of importation; and (c) taxes and duties on the subject shipment must be deducted from the amount recoverable by respondent.

On the same day, the Commissioner received AGFHA's Motion for Partial Reconsideration claiming that the 12% interest rate should be computed from the time its shipment was lost on June 15, 1999 considering that from such date, petitioner's obligation to release their shipment was converted into a payment for a sum of money.

On October 18, 2005, after the filing of several pleadings, the CTA-Second Division promulgated a resolution which reads:

WHEREFORE, premises considered, respondent Commissioner of Customs' "Motion for Partial Reconsideration" is hereby **PARTIALLY GRANTED**. The Resolution dated May 17, 2005 is hereby **MODIFIED** but only insofar as the Court did not impose the payment of the proper duties and taxes on the subject shipment. Accordingly, the dispositive portion of Our Resolution, dated May 17, 2005, is hereby **MODIFIED** to read as follows:

WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, INC. for the value of the subject shipment in the amount of ONE HUNDRED SIXTY THOUSAND THREE HUNDRED FORTY EIGHT AND 08/100 US DOLLARS (US\$160,348.08), subject however, to the payment of the prescribed taxes and duties, at the time of the importation. The Bureau of Custom's liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.

The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.

SO ORDERED.

Petitioner AGFHA, Inc.'s "Motion for Partial Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.^[10]

Consequently, the Commissioner elevated the above-quoted resolution to the CTA-