

FIRST DIVISION

[G.R. No. 178759, August 11, 2008]

CHEVRON PHILIPPINES, INC., PETITIONER, VS. COMMISSIONER OF THE BUREAU OF CUSTOMS, RESPONDENT.

D E C I S I O N

CORONA, J.:

This is a petition for review on certiorari^[1] of the decision^[2] and resolution^[3] of the Court of Tax Appeals (CTA) *en banc* dated March 1, 2007 and July 5, 2007, respectively, in CTA EB Nos. 121 and 122 which reversed the decision of the CTA First Division dated April 5, 2005 in CTA Case No. 6358.

Petitioner Chevron Philippines, Inc.^[4] is engaged in the business of importing, distributing and marketing of petroleum products in the Philippines. In 1996, the importations subject of this case arrived and were covered by eight bills of lading, summarized as follows:

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

The shipments were unloaded from the carrying vessels onto petitioner's oil tanks over 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. The import entry and internal revenue declarations (IEIRDs) of the shipments were thereafter filed on the following dates:

ENTRY NO.	PRODUCT	ARRIVAL DATE	IED	IEIRD
606-96	66,229,960 liters Nan Hai Crude Oil	3/8/1996	3/12/1996	5/10/1996
604-96	6,990,712 liters Reformate	3/18/1996	3/26/1996	5/10/1996
605-96	16,651,177 liters FCCU Feed Stock	3/21/1996	3/26/1996	5/10/1996
600-96 601-96 602-96 603-96	236,317,862 liters Oman/Dubai Crude Oil	3/26/1996	3/28/1996	5/10/1996
818-96	51,878,114 liters Arab Crude Oil	4/10/1996	4/10/1996	6/21/1996

The importations were appraised at a duty rate of 3% as provided under RA 8180^[6] and petitioner paid the import duties amounting to P316,499,021.^[7] Prior to the effectivity of RA 8180 on April 16, 1996, the rate of duty on imported crude oil was 10%.

Three years later, then Finance Secretary Edgardo Espiritu received a letter (with annexes) dated June 10, 1999 from a certain Alfonso A. Orioste denouncing the deliberate concealment, manipulation and scheme employed by petitioner and Pilipinas Shell in the importation of crude oil, thereby resulting in huge losses of revenue for the government. This letter was endorsed to the Bureau of Customs (BOC) for investigation on July 19, 1999.^[8]

On January 28, 2000, petitioner received a *subpoena duces tecum/ad testificandum* from Conrado M. Unlayao, Chief of the Investigation and Prosecution Division, Customs Intelligence and Investigation Service (IPD-CIIS) of the BOC, to submit pertinent documents in connection with the subject shipments pursuant to the investigation he was conducting thereon. It appeared, however, that the Legal Division of the BOC was also carrying out a separate investigation. Atty. Roberto Madrid (of the latter office) had gone to petitioner's Batangas Refinery and requested the submission of information and documents on the same shipments. This prompted petitioner to seek the creation of a unified team to exclusively handle the investigation.^[9]

On August 1, 2000, petitioner received from the District Collector of Customs of the Port of Batangas (District Collector) a demand letter requiring the immediate settlement of the amount of P73,535,830 representing the difference between the 10% and 3% tariff rates on the shipments. In response, petitioner wrote the District Collector to inform him of the pending request for the creation of a unified team with the exclusive authority to investigate the matter. Furthermore, petitioner objected to the demand for payment of customs duties using the 10% duty rate and reiterated its position that the 3% tariff rate should instead be applied. It likewise raised the defense of prescription against the assessment pursuant to Section 1603 of the Tariff and Customs Code (TCC). Thus, it prayed that the assessment for deficiency customs duties be cancelled and the notice of demand be withdrawn.^[10]

In a letter petitioner received on October 12, 2000, respondent Commissioner of the BOC^[11] stated that it was the IPD-CIIS which was authorized to handle the investigation, to the exclusion of the Legal Division and the District Collector.^[12]

The IPD-CIIS, through Special Investigator II Domingo B. Almeda and Special Investigator III Nemesio C. Magno, Jr., issued a finding dated February 2, 2001 that the import entries were filed beyond the 30-day non-extendible period prescribed under Section 1301 of the TCC. They concluded that the importations were already considered abandoned in favor of the government. They also found that fraud was committed by petitioner in collusion with the former District Collector.^[13]

Thereafter, respondent^[14] wrote petitioner on October 29, 2001 informing it of the findings of irregularity in the filing and acceptance of the import entries beyond the period required by customs law and in the release of the shipments after the same had already been deemed abandoned in favor of the government. Petitioner was ordered to pay the amount of P1,180,170,769.21 representing the total dutiable value of the importations.^[15]

This prompted petitioner to file a petition for review in the CTA First Division on November 28, 2001, asking for the reversal of the decision of respondent.^[16]

In a decision promulgated on April 5, 2005, the CTA First Division ruled that respondent was correct when he affirmed the findings of the IPD-CIIS on the existence of fraud. Therefore, prescription was not applicable. Ironically, however, it also held that petitioner did not abandon the shipments. The shipments should be subject to the 10% rate prevailing at the time of their withdrawal from the custody of the BOC pursuant to Sections 204, 205 and 1408 of the TCC. Petitioner was therefore liable for deficiency customs duties in the amount of P105,899,569.05.^[17]

Petitioner sought reconsideration of the April 5, 2005 decision while respondent likewise filed his motion for partial reconsideration. Both motions were denied in a resolution dated September 9, 2005.^[18]

After both respondent and petitioner had filed their petitions for review with the CTA *en banc*, docketed as CTA EB No. 121 and CTA EB No. 122, respectively, the petitions were consolidated.

In a decision dated March 1, 2007, the CTA *en banc* held that it was the filing of the IEIRDs that constituted entry under the TCC. Since these were filed beyond the 30-day period, they were not seasonably "entered" in accordance with Section 1301 in relation to Section 205 of the TCC. Consequently, they were deemed abandoned under Sections 1801 and 1802 of the TCC. It also ruled that the notice required under Customs Memorandum Order No. 15-94 (CMO 15-94) was not necessary in view of petitioner's actual knowledge of the arrival of the shipments. It likewise agreed with the CTA Division's finding that petitioner committed fraud when it failed to file the IEIRD within the 30-day period with the intent to "evade the higher rate." Thus, petitioner was ordered to pay respondent the total dutiable value of the oil shipments amounting to P893,781,768.21.^[19]

Hence this petition.

There are three issues for our resolution:

1. whether "entry" under Section 1301 in relation to Section 1801 of the TCC refers to the IED or the IEIRD;
2. whether fraud was perpetrated by petitioner and
3. whether the importations can be considered abandoned under Section 1801.

"ENTRY" IN SECTIONS 1301 AND 1801 OF THE TCC REFERS TO BOTH THE IED AND IEIRD

Under Section 1301 of the TCC, imported articles must be entered within a non-extendible period of 30 days from the date of discharge of the last package from a vessel. Otherwise, the BOC will deem the imported goods impliedly abandoned under Section 1801. Thus:

Section 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 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. (Emphasis supplied)

Section 1801. Abandonment, Kinds and Effect of. - An imported article is **deemed abandoned** under any of the following circumstances:

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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. (Emphasis supplied)

Petitioner argues that the IED is an entry contemplated by these sections. According to it, the congressional deliberations on RA 7651 which amended the TCC to provide a non-extendible 30-day period show the legislative intent to expedite the procedure for declaring importations as abandoned. Filing an entry serves as notice to the BOC

of the importer's willingness to complete the importation and to pay the proper taxes, duties and fees. Conversely, the non-filing of the entry within the period connotes the importer's disinterest and enables the BOC to consider the goods as abandoned. Since the IED is a BOC form that serves as basis for payment of advance duties on importation as required under PD 1853,^[20] it suffices as an entry under Sections 1301 and 1801 of the TCC.^[21]

We disagree.

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.^[22]

The IED serves as basis for the payment of advance duties on importations whereas the IEIRD evidences the final payment of duties and taxes. The question is: was the filing of the IED sufficient to constitute "entry" under the TCC?

The law itself, in Section 205, defines the meaning of the technical term "entered" as used in the TCC:

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.

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(Emphasis supplied)

Clearly, the operative act that constitutes "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. There is no dispute that the "specified entry form" refers to the IEIRD. Section 205 defines the precise moment when the imported articles are deemed "entered."

Moreover, in the old case of *Go Ho Lim v. The Insular Collector of Customs*,^[23] we ruled that the word "entry" refers to the regular consumption entry (which, in our current terminology, is the IEIRD) and not the provisional entry (the IED):

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