

## THIRD DIVISION

**[ G.R. No. 135253, December 09, 2004 ]**

### **COMMISSIONER OF CUSTOMS, PETITIONER, VS. MILWAUKEE INDUSTRIES CORPORATION, RESPONDENT.**

#### **D E C I S I O N**

#### **SANDOVAL-GUTIERREZ, J.:**

Assailed in this petition for review on certiorari<sup>[1]</sup> are the Decision<sup>[2]</sup> dated July 8, 1998 and Resolution dated August 24, 1998 of the Court of Appeals in CA-G.R. SP No. 44496, affirming the Decision of the Court of Tax Appeals (CTA) in C.T.A. Case No. 5160. The CTA Decision reversed and set aside the Commissioner of Customs' Decision ordering the forfeiture of respondent's shipment of imported steel billets.

Milwaukee Industries Corporation, respondent, is a domestic corporation engaged in the importation of steel billets, with principal office at No. 130 Amorsolo Street, Legaspi Village, Makati City. It has a warehouse/factory in Apalit, Pampanga where it manufactures and molds the street billets into finished products, such as plates, sheets, pipes, rods and bars for the local market.

On November 5, 1993, the Far East Bank and Trust Company (FEBTC) issued to respondent a commercial letter of credit in the amount of US\$2,071,000.00, in favor of Klockner & Co. of Germany for the importation of 11,985 pieces of secondary steel billets weighing 9,500 metric tons. At about the same time, respondent, through its customs broker, Schmitz Transport and Brokerage Corporation (Schmitz), filed with the FEBTC an Import Entry Declaration and deposited the amount of P1,863,598.00 representing the advance deposit for customs duties and taxes due on the importation. The Bureau of Customs then issued the corresponding Official Receipt No. 30277274 on the deposit.<sup>[3]</sup>

On February 1, 1994, the shipment of steel billets arrived at the port of Manila aboard the vessel "S/S SOLSYN." Forthwith, Jimmy Pastoriza, customs inspector, and Generoso Mirallo and Lucas Almendras, customs guards, who were tasked to supervise the unloading of the cargo, boarded the vessel. Jose Garcia, a supervisor of Schmitz, also boarded the vessel and presented to Inspector Pastoriza a Permit to Discharge Shipside (or "Shipside Permit"), he obtained from the Bureau of Customs, authorizing the discharge of the cargo from the vessel to the barges/lighters of Transport Venture, Inc. It took six days (from February 1 to 6, 1994) to discharge the cargo.

Inspector Pastoriza then issued thirteen Boat Notes on the entire shipment authorizing its transfer, with the instruction that the same should be "under guard" by the Bureau of Customs, and that the "(g)uard remain in continuous duty until released by Customs Authorities or upon presentation of a Valid Delivery Permit or PDIG."<sup>[4]</sup> Thus, the cargo was loaded into the trucks of Schmitz and transported to

the warehouse of respondent, the consignee, in Apalit, Pampanga.<sup>[5]</sup>

Subsequently, the Customs Intelligence and Investigation Division (CIID) of the Bureau of Customs received information that the transfer of the shipment to respondent's warehouse was questionable. Upon investigation, the CIID found that the shipment was transported without an Import Entry having been filed and without payment of the duties and taxes due thereon.

Consequently, on March 14, 1994, the CIID filed with the District Collector of Customs, Port of Manila, an application for the issuance of a warrant of seizure and detention against the cargo, docketed as Seizure Identification No. 94-055. The following day, the warrant of seizure and detention was issued.

Meanwhile, prior to the return of the warrant, Alfredo S. Gloria, respondent's consultant, conferred with the Commissioner of Customs, herein petitioner, concerning respondent's shipment. As a result of the conference, Gloria sent petitioner a letter dated March 16, 1994,<sup>[6]</sup> attaching therewith the required Import Entry document covering the shipment and two checks, one for the amount of P5,000,000.00 and another for P4,944,864.00 representing the full payment of the duties and taxes due.

On March 17, 1994, petitioner instructed its Special Assistant, Atty. Aaron Redubla, to accept the payment and to process the release of the shipment to respondent.<sup>[7]</sup> Accordingly, Atty. Redubla made a notation<sup>[8]</sup> on Gloria's letter that "per instruction," the shipment is "for further processing and release upon payment of taxes and duties."<sup>[9]</sup> Atty. Redubla then went to the Office of District Customs Collector Oscar Brillo and the Cash Division to implement petitioner's instruction.<sup>[10]</sup> In turn, District Collector Brillo scribbled a note on Gloria's letter ordering the processing of respondent's payment.<sup>[11]</sup> That same day (March 17, 1994), respondent's checks were duly received by the Bureau of Customs of Manila per Official Receipts Nos. 45981887 and 46051162.<sup>[12]</sup>

Notwithstanding the Bureau of Customs' acceptance of respondent's full payment of duties and taxes, District Collector Brillo still proceeded with the seizure and forfeiture proceedings. On August 3, 1994, he rendered a Decision<sup>[13]</sup> holding that "a violation of Section 2530 (f) and (l) - 3, 4 and 5 of the Tariff and Customs Code<sup>[14]</sup> was committed from the time the shipment was discharged from the vessel and taken to the warehouse of the consignee without legal documentation as required by laws and regulations for the same and without payment of duties and taxes due thereon."<sup>[15]</sup> Thus, the shipment was ordered "forfeited in favor of the Government, to be disposed of in the manner provided by law." The dispositive portion of the Decision reads:

"WHEREFORE, it is hereby ordered and decreed that the shipment of 11,985 pieces of secondary steel billets subject of this seizure case be, as it is hereby, FORFEITED in favor of the Government, to be disposed of in the manner provided for by law.

Let copies of this Decision be furnished all parties and offices concerned for their information and guidance.

SO ORDERED.”

Respondent appealed to the Office of petitioner Commissioner of Customs, docketed as Customs Case No. 94-09. On September 8, 1994, Deputy Commissioner Licerio C. Evangelista, “by authority of the Commissioner of Customs,” rendered a Decision<sup>[16]</sup> affirming the District Collector’s Decision. Respondent’s motion for reconsideration was likewise denied.

Aggrieved, respondent filed with the Court of Tax Appeals (CTA) a petition for review, docketed as C.T.A. Case No. 5160. In its Decision<sup>[17]</sup> dated April 8, 1997, the CTA reversed and set aside petitioner’s Decision. The CTA ruled that petitioner erred in ordering the seizure of the shipment because (1) at the time the shipment was transported to respondent’s warehouse in Apalit, Pampanga, the same was “not released” from the Customs’ custody “but was merely transferred or discharged under continuous customs guarding;” and (2) after respondent had fully paid the customs duties and taxes due on the shipment, the same should have been released by petitioner to respondent. The dispositive portion of the CTA Decision reads:

“WHEREFORE, in view of the foregoing, the instant petition for review is hereby GRANTED. The assailed Decision of the respondent in Customs Case No. 94-09 (Manila Seizure Identification No. 94-055) is hereby REVERSED and SET ASIDE. Accordingly, the Surety Bond (PGA Bond No. HQ 34515-95/G<sup>[16]</sup> No. 17997 as amended under Endorsement No. HQ-E-09398-96 in the total amount of P75,000,000.00) posted by the petitioner is ordered CANCELLED.

SO ORDERED.”

Petitioner’s motion for reconsideration was also denied in the CTA Resolution dated May 23, 1997.<sup>[18]</sup>

On appeal by petitioner to the Court of Appeals, the latter affirmed the CTA Decision in its Decision dated July 8, 1998.<sup>[19]</sup> Petitioner filed a motion for reconsideration but was denied in a Resolution dated August 24, 1998.<sup>[20]</sup>

Hence, this petition.

Petitioner contends that –

“THE COURT OF APPEALS ERRED IN DISREGARDING THE FOLLOWING PROPOSITIONS:

I

THE SHIPMENT OF STEEL BILLETS WAS **RELEASED** TO RESPONDENT MILWAUKEE INDUSTRIES CORPORATION AND **NOT MERELY TRANSFERRED OR DISCHARGED UNDER CONTINUOUS CUSTOMS GUARDING;** and

II

CONSIDERING THAT AT THE TIME THE SHIPMENT WAS RELEASED, RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS OF THE TARIFF AND CUSTOMS CODE, THE IMPORTATION IS UNAUTHORIZED OR ILLEGAL, HENCE SUBJECT TO SEIZURE.”<sup>[21]</sup>

Petitioner wants us to resolve (1) whether the shipment in question was released to respondent from the custody of the Customs authorities, as held by both petitioner and the District Collector of Customs, and not merely transferred to respondent’s warehouse, as found by the CTA and affirmed by the Court of Appeals; and (2) whether respondent failed to comply with the customs requirements to justify the seizure and forfeiture of the shipment.

Obviously, these issues entail a reevaluation of factual circumstances, a matter that normally cannot be undertaken by this Court as it is not a trier of facts.<sup>[22]</sup> However, we are constrained to resolve the issues raised since the findings of both petitioner and the District Collector of Customs on the one hand, are in conflict with those of the CTA and Court of Appeals, on the other.

We have reviewed the records and we find the petition devoid of merit.

Petitioner’s contention that when the shipment in question was transported to respondent’s warehouse in Apalit, Pampanga, the same was “released” from the custody of the Customs authorities is misplaced. It bears stressing that such transfer of the shipment was made by virtue of the Boat Notes issued by Customs Inspector Jimmy Pastoriza. He made a specific instruction in the Boat Notes that the shipment should be “under continuous guarding” by the Customs guard “until released by the Customs authorities,” obviously because the customs duties and taxes due thereon have not yet been *paid*. Clearly, the physical and legal custody over the shipment remained with the Customs authorities. As ruled by the Court of Appeals:

“In the Decision under review, public respondent CTA found and held *inter alia* that at the time of the transfer of the subject shipment to Milwaukee’s factory, the same was **not ‘released’ but merely transferred or discharged under ‘continuous customs guarding.’** **The said factual finding of the CTA was based, among others, on the following corroborating evidence which belie petitioner’s claim:**

(a) Boat Notes (Exhibits ‘S’ to ‘S-12’ and their sub-markings) signed by then Discharging Customs Inspector Pastoriza, majority of which contain a remark to wit:

‘NOTE:

Shipside discharge unto lighter under guard. **Guard to remain in continuous duty until released by Customs proper authorities** or upon proper presentation of a valid delivery permit or PDIG.’

b) Bill and/or statement demanding payment of overtime services rendered by Customs Guard in guarding the subject shipment of steel