

## **THIRD DIVISION**

**[ G.R. No. 103073, March 13, 2001 ]**

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE BUREAU  
OF CUSTOMS, PETITIONER, VS. THE HONORABLE COURT OF  
APPEALS AND R & B SURETY AND INSURANCE COMPANY, INC.,  
RESPONDENTS.**

### **R E S O L U T I O N**

**VITUG, J.:**

Submitted for resolution is a motion for reconsideration of the decision, dated 14 September 1999, of the Court. Respondent-movant R & B Surety and Insurance, Inc. ("R & B"), contends that -

"I

"THE SUSPENSION OF ENDELO'S LICENSE TO OPERATE RENDERED THE OBLIGATION TO RE-EXPORT IMPOSSIBLE OF PERFORMANCE AND/OR EQUIVALENT TO CANCELLATION OR REVOCATION OF SAID LICENSE, THEREBY DISCHARGING THE SURETY FROM ITS OBLIGATION.

"II

"ASSUMING ARGUENDO THAT R & B SURETY IS LIABLE, IT IS NOT SOLIDARILY LIABLE WITH THE OTHER SURETY, COMMUNICATIONS INSURANCE COMPANY, INC. (CICI) AS ERRONEOUSLY HELD BY THE RTC.

"III

"IN BOND NUMBERS 0064 AND 0073, R & B SURETY WAS ERRONEOUSLY CHARGED FOR MORE THAN THE FACE VALUE OF THE BOND WHILE IN BOND NUMBER 0067, R & B SURETY WAS MISTAKENLY CHARGED TWICE IN PALPABLE VIOLATION OF SECTION 176 OF THE INSURANCE CODE LIMITING THE SURETY'S LIABILITY TO THE AMOUNT OF THE BOND."<sup>[1]</sup>

Additionally, respondent argues that it should not be held liable for the payment of legal interest which would increase its liability beyond the amount of the bond.

The Court, in its resolution of 15 November 1999, required the Solicitor General to comment on the motion for reconsideration. In his concluding statement, the Solicitor General stated:

"WHEREFORE, except for its plea for modification of this Honorable Court's Decision on the amount of its liability, it is respectfully prayed that private respondent's Motion for Reconsideration be denied for lack of merit."<sup>[2]</sup>

Relative to the first ground invoked by movant, suffice it to state that it was not clearly shown that the suspension of Endelo's license had rendered it impossible for Endelo to re-export the articles in question, or that such a suspension had amounted to a cancellation or revocation of its license that could thereby justify a discharge of respondent R & B from its liability. The matter was sufficiently discussed in the Court's decision -

"Admittedly, Endelo's license to operate was suspended sometime in 1970, a fact clearly gleanable from the allegations of Endelo in its Answer to the Complaint, claiming that its failure to export the imported raw materials in its original state or as finished products was due to the suspension of its license to operate allegedly done illegally and unnecessarily by the Board. Such allegation of illegal and unnecessary suspension was, however, **not backed by any supporting evidence. Neither is there sufficient proof that the suspension of Endelo's license was made during the two-year period. Much less has it been shown that such suspension prevented it from complying with its obligations under the bonds.**

"Records show that the pilferage by Endelo and the subsequent investigation conducted thereon, which resulted in the suspension of its license in 1970, was admitted by Atty. Casareno under cross-examination on October 23, 1986. That the investigation report thereon could not be produced was adequately explained by Atty. Casareno who testified that the investigation report and records pertaining to such investigation have been condemned since the said documents were kept in the custody of the Bureau of Customs only for a period of five (5) years.

"Having relied on the illegality of its suspension by way of defense, Endelo and not petitioner has the burden of proving the same. In addition, **Endelo was duty-bound to prove whether or not the suspension of its license was for an indefinite period or merely for a limited time.** Despite this well-established rule, the Court of Appeals shifted that burden to the petitioner, and without any sustainable basis, upheld the theory of Endelo that the suspension of its license was invalid. But no such implication can be drawn either from the failure of petitioner to show the propriety of the suspension order or from the mere non-production of the documents or records of the alleged investigation prior to the order of suspension. Further, absent convincing evidence to the contrary, the presumption of regularity in the performance of official functions has to be applied.

"x x x x x x x x

"x x x. What is more, Endelo was not without recourse insofar as its duty to comply with its obligation was concerned. Assuming for the sake of argument that the suspension in question was indeed illegal, records show no effort on the part of Endelo to have the said suspension lifted by the Embroidery and Apparel Control and Inspection Board. As aptly observed by petitioner, such omission has bolstered the submission that the suspension of Endelo's license was proper and the alleged pilferage was the main cause therefor. **Moreover, it does not appear that**