413 Phil. 106

SECOND DIVISION

[G.R. No. 134114, July 06, 2001]

NESTLE PHILIPPINES, INC., (FORMERLY FILIPRO, INC.) PETITIONER, VS. HONORABLE COURT OF APPEALS, COURT OF TAX APPEALS AND COMMISSIONER OF CUSTOMS, RESPONDENTS.

D E C I S I O N

DE LEON, JR., J.:

Challenged in this petition for review on certiorari is the Decision[1] in CA-G.R. SP. No. 43188[2] dated September 23, 1997 of the Court of Appeals which affirmed the Decision[3] dated May 30, 1995 of the Court of Tax Appeals in C.T.A. Case No. 4478[4] dismissing petitioner's petition for review to compel the Commissioner of Customs to grant it a refund of allegedly overpaid import duties, on its various importations of milk and milk products, amounting to Five Million Eight Thousand and Twenty-Nine Pesos (P5,008,029.00).

Petitioner's motion for reconsideration thereof was denied by the Court of Appeals in a Resolution[5] dated June 9, 1998.

The antecedent facts are as follows.

Petitioner is a duly organized domestic corporation engaged in the importations of milk and milk products for processing, distribution and sale in the Philippines. Between July and November 1984, petitioner transacted sixteen (16) separate importations of milk and milk products from different countries. Petitioner was assessed customs duties and advance sales taxes by the Collector of Customs of Manila for each of these separate importations on the basis of the published Home Consumption Value (HCV) indicated in the Bureau of Customs Revision Orders. Petitioner paid the same but seasonably filed the corresponding protests before the said Collector of Customs from October 25 to December 5, 1984, uniformly alleging therein that the latter erroneously applied higher home consumption values in determining the dutiable value for each of these separate importations. In the said protests, petitioner claims for refund of both the alleged overpaid import duties amounting to Five Million Eight Thousand and Twenty-Nine Pesos (P5,008,029.00) and advance sales taxes aggregating to Four Million Five Hundred Sixty-Four Thousand One Hundred Seventy-Nine Pesos and Thirty Centavos (P4,564,179.30).

On October 14, 1986, petitioner formally filed a claim for refund of allegedly overpaid advance sales taxes with the Bureau of Internal Revenue (BIR) amounting to Four Million Five Hundred Sixty-Four Thousand One Hundred Seventy-Nine Pesos and Thirty Centavos (P4,564,179.30) covering the same sixteen (16) importations of milk and milk products from different countries. Not long after, on October 15,

1986 and within the two-year prescriptive period provided for under the National Internal Revenue Code (NIRC) for claiming a tax refund, petitioner filed the corresponding petition for review with the Court of Tax Appeals (CTA) which was docketed therein as C.T.A. Case No. 4114. On January 3, 1994, the tax court ruled in favor of petitioner and forthwith ordered the BIR to refund to the petitioner the sum of Four Million Four Hundred Eighty-Nine Thousand Six Hundred Sixty-One Pesos and Ninety-Four Centavos (P4,489,661.94) representing the overpaid Advance Sales Taxes on the aforesaid importations.

On the other hand, the sixteen (16) protest cases for refund of alleged overpaid customs duties amounting to Five Million Eight Thousand Twenty-Nine Pesos (P5,008,029.00) were left with the Collector of Customs of Manila. However, the said Collector of Customs failed to render his decision thereon after almost six (6) years since petitioner paid under protest the customs duties on the said sixteen (16) importations of milk and milk products and filed the corresponding protests.

Consequently, in order to prevent these claims from becoming stale on the ground of prescription, petitioner immediately filed a petition for review docketed as C.T.A. Case No. 4478, with the Court of Tax Appeals on August 2, 1990 despite the absence of a ruling on its protests from both the Collector of Customs of Manila and the Commissioner of Customs.

On May 30, 1995, the CTA rendered judgment dismissing C.T.A. Case No. 4478 for want of jurisdiction.[6] The subsequent motion for reconsideration filed by the petitioner on July 11, 1995 was denied for lack of merit in a Resolution[7] dated January 6, 1997.

Aggrieved, petitioner appealed on February 10, 1999 the said judgment and resolution of the CTA in C.T.A. Case No. 4478 to the Court of Appeals by way of petition for review on certiorari under Rule 45 of the Rules of Court. However, this appeal was later dismissed by the appellate court on September 23, 1997 for lack of merit. The Court of Appeals opined, *inter alia*, that the CTA's jurisdiction is not concurrent with the appellate jurisdiction of the Commissioner of Customs since there was no decision or ruling yet of the Collector of Customs of Manila on the matter; that the petition does not fall under any of the recognized exceptions on exhaustion of administrative remedies to justify petitioner's immediate resort to the CTA; that the petitioner failed to move for the early resolution of its claims for refund nor was there any notice given that the said Collector of Customs' continued inaction on its claims would be deemed a denial of its claims; and that petitioner also neglected to cite any law or jurisprudence which prescribes a period for filing an appeal in the CTA even if there was no action yet by the Commissioner of Customs.

On June 9, 1998, the appellate court issued a Resolution[8] denying petitioner's motion for reconsideration for lack of merit.

Hence, this petition.

Petitioner assigns the following as errors, to wit:

1. RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE FILING OF PROTEST CASES

BEFORE THE COLLECTOR OF CUSTOMS HAD EFFECTIVELY INTERRUPTED THE RUNNING OF THE SIX-YEAR PRESCRIPTIVE PERIOD;

2. RESPONDENT COURTS COMMITTED FUNDAMENTAL ERRORS AND ACTED WITH GRAVE ABUSE OF DISCRETIONS IN HOLDING THAT PETITIONER HAD FAILED TO EXHAUST ADMINISTRATIVE REMEDIES, NOTWITHSTANDING ALMOST 6 YEARS OF PROCTRACTED HEARINGS OF THE 16 PROTEST CASES WITH THE CUSTOMS COLLECTOR, AND FILING OF THE PETITION ONLY WHEN THE SIX-YEAR PRESCRIPTIVE PERIOD WAS ABOUT TO EXPIRE TO AVOID NULLLIFICATION OF CLAIMS ON GROUND OF PRESCRIPTION;

3. THE RESPONDENT COURTS GRAVELY ERRED IN DISMISSING ON SHEER TECHNICALITIES PETITIONER'S CLAIMS FOR THE REFUND OF P5,008,029.08 (SIC) OVERPAID DUTIES, WHEN THE FACTS OF OVERPAYMENTS HAD BEEN EARLIER RESOLVED IN CTA CASE NO. 4114, HOLDING THAT THE WRONG APPLICATION OF THE HIGHER HOME CONSUMPTION VALUES RESULTED IN THE OVERPAYMENTS OF DUTIES AND TAXES, AND UPON WHICH, IT ORDERED THE REFUND OF P4,489,661.94 IN OVERPAID TAXES. THERE IS NO VALID REASON THEREFORE WHY THE CORRESPONDING OVERPAYMENTS IN CUSTOMS DUTIES CAN NOT ALSO BE REFUNDED TO ITS RIGHTFUL OWNER, THE PETITIONER HEREIN.

In this petition, petitioner asserts that tax refunds are based on quasi-contract or *solutio indebiti*, which under Article 1145[9] of the Civil Code, prescribes in six (6) years. Consequently, the pendency of its protest cases before the office of the Collector of Customs of Manila did not interrupt the running of the prescriptive period under the aforesaid provision of law considering that it is only an administrative body performing only quasi-judicial function and not a regular court of justice.[10] Thus, in like manner the thirty-day period for appealing to the CTA must be made within the six-year prescriptive period.

Petitioner further contends that the fact of overpayment of customs duties has been duly established and resolved with finality by the Court of Tax Appeals on January 3, 1994 in C.T.A. Case No. 4114.[11] In that case, the tax court found that the Bureau of Customs erroneously used the wrong home consumption value in assessing the petitioner the Advance Sales Tax on its subject sixteen (16) importations. The tax court then ordered the Commissioner of Internal Revenue to refund to the petitioner the sum of Four Million Four Hundred Eighty-Nine Thousand Six Hundred Sixty-One Pesos and Ninety-Four Centavos (P4,489,661.94), representing overpaid advance sales tax covering the same sixteen (16) importations. It is also from the same 16 separate importations of milk and milk products that petitioner based its claims for refund of overpayment of customs duties. Thus, petitioner avers that its claims for refund of overpaid customs duties must likewise be granted and awarded in its favor.

In lieu of Comment,[12] the Solicitor General manifested that there is merit in petitioner's argument considering that petitioner's cause of action to recover a tax

erroneously paid is based on *solutio indebiti* which is expressly classified as a quasi-contract under the Civil Code; that petitioner's cause of action would have prescribed on August 2, 1990 if it did not bring the matter before the CTA; and that the Collector of Customs has not even acted or resolved the petitioner's several protests it had filed before his office within six (6) years after it made the earliest payment of advance customs duties on its importations.

There was also no violation of the principle of exhaustion of administrative remedies in this case. This doctrine does not apply to the case at bar since its observance would only result in the nullification of the claim for refund being asserted nor would it provide a plain, speedy and adequate remedy under the circumstances. This notwithstanding, however, the Solicitor General further opined that this case should be remanded to the CTA in order for the tax court to determine the veracity of petitioner's claim.

On the other hand, respondent Commissioner of Customs, in his Comment[13] dated August 21, 2000, admitted with regret, their official inaction adverted to by the petitioner. Respondent Commissioner expressed the view that petitioner's claim for refund of customs duties should not outrigthly be denied by virtue of the strict adherence to the rules to prevent grave injustice to hapless taxpayers; that this does not justify, however, an outright award of the refund of alleged overpayment of customs duties in favor of petitioner; and that there is no definite factual determination yet that the customs duties and taxes in question were overpaid and refundable, and if refundable how much is the refundable amount. The fact that the Collector of Customs of Manila failed to act or decide on the petitioner's protest cases filed before his Office does not relieve the petitioner of its burden to prove that it is entitled to the refund sought for. Thus, respondent Commissioner of Customs, thru his special counsel, recommended that this case be remanded to the court of origin, namely, the CTA.

The recommendations of both the Solicitor General and the respondent Commissioner of Customs are well taken. After a meticulous consideration of this case, we find that the recommended remand of this case to the CTA is warranted for the proper verification and determination of the *factual basis and merits* of this petition and in order that the ends of substantial justice and fair play may be subserved. We are of the view that the said recommendation is in accord with the provisions of the Tariff and Customs Code as hereinafter discussed.

The right to claim for refund of customs duties is specifically governed by Section 1708 of the Tariff and Customs Code, which provides that -

> "Sec. 1708. *Claim for Refund of Duties and Taxes and Mode of Payment.* - **All claims for refund of duties shall be made in writing and forwarded to the Collector** to whom such duties are paid, **who *upon receipt* of such claim, *shall* verify the same by the records of his Office**, and if found to be correct and in accordance with law, shall certify the same to the Commissioner with his recommendation together with all necessary papers and documents. Upon receipt by the Commissioner of such certified claim he shall cause the same to be paid if found correct."

It is clear from the foregoing provision of the Tariff and Customs Code that *in all claims for refund of customs duties*, the *Collector* to whom such customs duties are