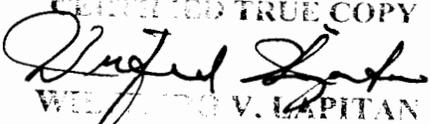


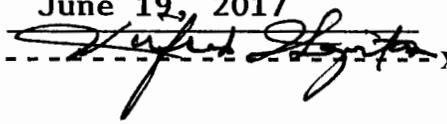
SPECIAL THIRD DIVISION

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WELFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 05 2017

“G.R. No. 195876 (*Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*). –

Promulgated:

June 19, 2017

X -----  ----- X

DISSENTING OPINION

PERALTA, J.:

This treats of the Omnibus Motion filed by respondent, as represented by the Office of the Solicitor General (*OSG*), praying that: (1) the present case be referred to the Court *En Banc* for resolution; (2) the Decision of this Court dated December 5, 2016 be reversed and set aside; and (3) the May 13, 2010 Decision and February 22, 2011 Resolution of the Court of Tax Appeals Former *En Banc* be affirmed.

Respondent raises the following contentions:

The government's ownership of the abandoned article in the case at bar is absolute and petitioner could not have reclaimed title over the same at the time of disposition. As such, being the owner of the abandoned article, the government is entitled to its full value

The extent of the prescriptive period under Section 1603 of the TCCP is limited only to the final determination of the exact amount of duties on imported articles. It does not extend to the recovery of abandoned articles under Sections 1801 and 1802 of the TCCP.

In view of the conflicting rulings in *Chevron* and in the instant case, the subject petition should be referred to the Court *En Banc*.¹

I vote to grant the Omnibus Motion.



¹ *Rollo*, pp. 1325, 1333 and 1341.

As I have previously discussed in my dissenting opinion to the majority Decision, the supposed duty of the government, through the Bureau of Customs (*BOC*), to assess and collect customs duties within a period of one year, in the absence of fraud, becomes immaterial once an importer fails to file the required import entries within the non-extendible period of thirty (30) days from the date of discharge of the last package from the carrying vessel. This is so because after the lapse of the said 30-day period, the imported articles are deemed impliedly abandoned and, *ipso facto*, becomes the property of the government. This is precisely the logic behind the reason why the *BOC*, in the instant case, is not seeking to collect customs duties from petitioner in the exercise of its power to tax under the law. Instead, it seeks to recover the dutiable value of the oil importations to vindicate its right as the owner of the subject imported oil products which were appropriated by petitioner despite having abandoned the same.

Petitioner insists on the applicability of the provisions of Section 1603 of the Tariff and Customs Code of the Philippines (*TCCP*) to the present case. However, petitioner should be reminded that Section 1603 of the *TCCP*, as aptly titled, refers to the finality of liquidation. As previously held by this Court in a separate case, liquidation is the final computation and ascertainment by the Collector of Customs of the duties due on imported merchandise based on official reports as to the quantity, character and value thereof, and the Collector of Customs' own finding as to the applicable rate of duty.² Thus, liquidation means the assessment or determination of whether duties should be imposed on imported articles and, if so, the amount thereof. The finality of the liquidation contemplated under Section 1603 of the *TCCP* is meant to limit the taxing powers of the State by providing that, after the lapse of one year from the date of final payment of duties, the government is already precluded from making further determination or adjustment of duties on the imported articles. In the present case, there is no liquidation to speak of as the *BOC* is no longer trying to assess and collect duties due on petitioner's importation. What the *BOC* demands from petitioner is the payment of the dutiable value of the latter's oil importation which was deemed abandoned and became, *ipso facto*, the property of the government. In filing an action for the recovery of the dutiable value of the subject oil importation, the government is exercising not its power to assess and collect duties and taxes but its right of ownership over the abandoned imported articles. Hence, Section 1603 of the *TCCP* is not applicable in the present case. Thus, as correctly posited by the *OSG*:

² *Pilipinas Shell Petroleum Corporation v. Republic of the Philippines*, 571 Phil. 418, 424-425 (2008),



x x x x x x x x x

x x x at the liquidation stage, one of two things may happen: (a) articles will enter and pass free of duty, or (b) final adjustment of duties will be made. In other words, there will be a final determination of whether duties should be paid as well as the amount thereof.

51. After the expiration of one (1) year from the date of the final payment of duties, such entry and passage free of duty or settlement of duties shall be final and conclusive upon all parties. This means that the exact amount of duties can no longer be corrected, and the Collector of Customs is no longer authorized to re-liquidate entries and collect additional charges or make refunds. The law, however, provides for exceptions, one of which is the presence of fraud.

x x x x x x x x x

53. x x x, the prescriptive period under Section 1603 of the TCCP can be essentially characterized as a limitation on the taxing powers of the government. It aims to ensure that the determination of the amount of duty can no longer be disturbed after one (1) year. Indeed, if any errors were committed that resulted in under- or over-collection of duties, all parties are barred from correcting it anymore after the prescriptive period.

54. Thus, respondent agrees with this Honorable Court's Third Division that the government is precluded from disturbing the settlement of duties after the expiration of the prescriptive period. The government can no longer look into any errors, including anything that may arise from the filing of the necessary documents, for the purpose of determining the amount of duties.

55. Respondent, however, takes exception to the ruling of this Honorable Court's Third Division that said prescriptive period extends to the determination of the timeliness of filing of import entries for the purpose of determining whether an article has been deemed abandoned.

56. As discussed above, an article is deemed abandoned when the importer fails to file an entry within a non-extendible period of thirty (30) days from the date of discharge of the package from the vessel. Such abandoned article shall *ipso facto* be deemed the property of the Government. Nothing in the law requires that such ownership shall be subject to any other condition, much less Section 1603 of the TCCP which only applies to the finality of liquidation of duties.

57. By virtue of the transfer of ownership of the abandoned article from petitioner to the government, the petitioner unjustly enriched itself when it appropriated the same at the expense of the government. Thus, it is but just that petitioner be held liable not for a mere tax deficiency – which cannot be re-liquidated beyond the period conferred by Section 1603 – but for the value of government property which it consumed and disposed without legal authority.



58. It bears, emphasis that when a government property is unlawfully appropriated and the government desires to recover its value, the government is merely exercising its right of ownership. Considering that in the instant case, respondent is demanding the value of a government property which was abandoned and appropriated by the petitioner – as opposed to the duties due thereon – Section 1603 of the TCCP does not apply. There is no rhyme or reason for applying the prescriptive period under Section 1603 of the TCCP, which is essentially a limitation on the state's exercise of its taxing powers.

x x x x x x x x x³

Consequently, since what the government seeks is the recovery of the value of the subject abandoned oil importation, the CTA Former *En Banc* correctly held that the existence or absence of fraud becomes immaterial. Fraud is relevant only in cases of assessment and collection of taxes and duties on the ground that its existence will not preclude the government from making further liquidation or assessment of duties due on imported articles.

In any case, I take exception to the findings of the majority that petitioner did not commit fraud. It bears to point out that the CTA First Division's finding of fraud was based on the February 2, 2011 Memorandum issued by Special Investigator II Domingo B. Almeda and Special Investigator III Nemesio C. Magno, Jr. of the Customs Intelligence & Investigation Service – Investigation and Prosecution Division (*CIIS-IPD*) of the Bureau of Customs. Pertinent portions of the said Memorandum read, thus:

It is worth to mention at this point that the investigation has established conspiracy to commit fraud against the government, between the former District Collector of the Port of Batangas and Messrs. Casabal and Cabrera of Caltex and Mr. Marasigan of Shell.

The records show that Caltex and Shell bided their time to file their import entries after the 30-day period has prescribed at 3% rate of duty. The District Collector, despite being informed by his subordinates about the lapse of the prescribed period of 30 days allowed the acceptance of the entry and the collection of duty based on the declared rate despite the fact that the Law cited earlier does not grant him such authority.

Obviously, the District Collector, in conspiracy with the above-named officials of Caltex and Shell acted without authority or abused his authority by giving undue benefits to the importers by allowing the processing, payment and subsequent release of the shipments to the damage and prejudice of the government who, under the law is already the owner of the shipments valued at Php2,176,155,929.00 which was allowed

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Rollo, pp. 1335-1337.



to be withdrawn by the importers after paying meager amounts of duties and taxes.⁴

This is the same document relied upon by this Court in *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*⁵ when it ruled that *Chevron* was, likewise, guilty of fraud, although, in the presently assailed Decision, the majority disregarded this piece of evidence.

As in *Chevron*, the circumstances surrounding petitioner's delayed filing of its IEIRD indicate fraud as evidence shows that there is an apparent preconceived design or intent to evade the payment of the correct customs duties prevailing at the time of arrival of the subject imported crude oil. Why would petitioner delay the filing of its IEIRD and run the risk of having its oil importation deemed abandoned if not for its desire to evade the payment of the correct amount of duties on the said importation? Petitioner's excuse of discrepancy in the amount of crude oil actually delivered to it and the figure stated in the Bill of Lading as well as the absence of supporting documents as the cause of its delay in filing the required IEIRD is unavailing. In this respect, the CTA First Division ruled as follows:

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The Court finds petitioner's excuses, that the causes for the delay in the filing of IEIRD are delay in the arrival of the commercial invoice; and the necessity to correct an error in the volume of crude oil received by Petitioner, implausible. Records show that two Bills of Lading were simultaneously issued on March 5, 1996 for the carriage of Arab light crude oil. One Bill of Lading was for 1,880,057 US barrels, while the other Bill of Lading was for 104,448 US barrels. Thus, the net of imported crude oil can be easily computed as 1,984,505 US barrels. The Bills of Lading should have been submitted as supporting document[s], together with the IEIRD for the determination of the correct amount of customs duty which petitioner should pay for its importation.⁶

Even assuming that there was indeed a delay in the arrival of the commercial invoices which are supposedly necessary to accurately reflect the volume of crude oil received by petitioner, considering the serious consequences of delayed filing, the absence of these documents should not have prevented petitioner from complying with the mandatory and non-extendible 30-day period for the filing of its IEIRD. If petitioner is in good faith, the least that it should have done was to file the IEIRD on the basis of the available documents and inform the BOC of the possibility of amending the IEIRD upon arrival of the documents needed to make accurate and complete entries. From the foregoing, it becomes evident that petitioner, for

⁴ *Id.* at 352.

⁵ 583 Phil. 706 (2008).

⁶ *Rollo*, p. 350.



all intents and purposes, intended to defraud the government of its lawful revenue.

As to respondent's third contention, contrary to the petitioner's argument in its Opposition to the Omnibus Motion for Reconsideration, the instant *ponencia* is in conflict with this Court's ruling in *Chevron*. Even a quick reading of this Court's concluding statements in *Chevron* readily shows the basic principle established therein. Thus, I quote:

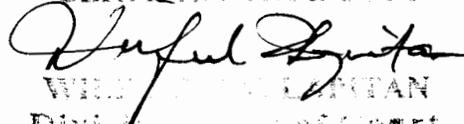
CONCLUSION

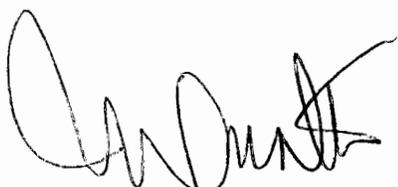
Petitioner's failure to file the required entries within a non-extendible period of thirty days from date of discharge of the last package from the carrying vessel constituted implied abandonment of its oil importations. This means that from the precise moment that the non-extendible thirty-day period lapsed, the abandoned shipments were deemed (that is, they became) the property of the government. Therefore, when petitioner withdrew the oil shipments for consumption, it appropriated for itself properties which already belonged to the government. Accordingly, it became liable for the total dutiable value of the shipments of imported crude oil amounting to P1,210,280,789.21 reduced by the total amount of duties paid amounting to P316,499,021.00 thereby leaving a balance of P893,781,768.21.

By the very nature of its functions, the CTA is a highly specialized court specifically created for the purpose of reviewing tax and customs cases. It is dedicated exclusively to the study and consideration of revenue-related problems and has necessarily developed an expertise on the subject. Thus, as a general rule, its findings and conclusions are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority. There is no such showing here.⁷

The contrary ruling of the majority, as expressed in the *ponencia*, is a clear abandonment of the established principle in *Chevron*; thus, the need to refer this case to the Court *en banc*.

Accordingly, I vote to **GRANT** the instant Omnibus Motion.

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 WILSON P. PERALTA
 Division of Court
 JUL 05 2017


DIOSDADO M. PERALTA
 Associate Justice

⁷ *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, *supra* note 5, at 736-737. (Emphasis ours).