Supreme Court E-Library

SECOND DIVISION

[G.R. No. 187425. March 28, 2011]

COMMISSIONER OF CUSTOMS, *petitioner, vs.* **AGFHA INCORPORATED,** *respondent.*

SYLLABUS

1. TAXATION; COMMISSIONER OF CUSTOMS; FOR LOST SHIPMENT UNDER HIS CUSTODY, THE COMMISSIONER IS LIABLE FOR THE VALUE THEREOF WHICH IS THE ACQUISITION COST *AT THE TIME OF ACTUAL PAYMENT.*— The Court agrees with the ruling of the CTA that AGFHA is entitled to recover the value of its lost shipment based on the acquisition cost at the time of payment. In the case of *C.F. Sharp and Co., Inc. v. Northwest Airlines, Inc.* the Court ruled that the rate of exchange for the conversion in the peso equivalent should be the prevailing rate at the time of payment: In ruling that the applicable conversion rate of petitioner's liability is the rate at the time of payment, the Court of Appeals cited the case of *Zagala v. Jimenez*, interpreting the provisions of Republic Act No. 529, as amended by R.A. No. 4100. Under this law, stipulations on the satisfaction of obligations in foreign currency are void. Payments of monetary obligations, subject to certain exceptions, shall be discharged in the currency which is the legal tender in the Philippines. But since R.A. No. 529 does not provide for the rate of exchange for the payment of foreign currency obligations incurred after its enactment, the Court held in a number of cases that **the rate of exchange for the conversion in the peso equivalent should be the prevailing rate at the time of payment.** Likewise, in the case of *Republic of the Philippines represented by the Commissioner of Customs v. UNIMEX Micro-Electronics GmBH*, which involved the seizure and detention of a shipment of computer game items which disappeared while in the custody of the Bureau of Customs, the Court upheld the decision of the CA holding that petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment.

Supreme Court E-Library

2. ID.; ID.; ID.; STATE IMMUNITY DOCTRINE, NOT APPLICABLE. — On the issue regarding the state immunity doctrine, the Commissioner cannot escape liability for the lost shipment of goods. This was clearly discussed in the *UNIMEX Micro-Electronics GmBH* decision, where the Court wrote*:* Finally, petitioner argues that a money judgment or any charge against the government requires a corresponding appropriation and cannot be decreed by mere judicial order. Although it may be gainsaid that the satisfaction of respondent's demand will ultimately fall on the government, and that, under the political doctrine of "state immunity," it cannot be held liable for governmental acts (*jus imperii*), we still hold that petitioner cannot escape its liability. The circumstances of this case warrant its exclusion from the purview of the state immunity doctrine. **As previously discussed, the Court cannot turn a blind eye to BOC's ineptitude and gross negligence in the safekeeping of respondent's goods. We are not likewise unaware of its lackadaisical attitude in failing to provide a cogent explanation on the goods' disappearance, considering that they were in its custody and that they were in fact the subject of litigation. The situation does not allow us to reject respondent's claim on the mere invocation of the doctrine of state immunity. Succinctly, the doctrine must be fairly observed and the State should not avail itself of this prerogative to take undue advantage of parties that may have legitimate claims against it.** In *Department of Health v. C.V. Canchela & Associates*, we enunciated that this Court, as the staunch guardian of the people's rights and welfare, cannot sanction an injustice so patent in its face, and allow itself to be an instrument in the perpetration thereof. Over time, courts have recognized with almost pedantic adherence that what is inconvenient and contrary to reason is not allowed in law. Justice and equity now demand that the State's cloak of invincibility against suit and liability be shredded.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rico & Associates for respondent.

Supreme Court E-Library

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the February 25, 2009 Decision[1] of the Court of Tax Appeals En Banc *(CTA-En Banc)*, in CTA EB Case No. 136, which affirmed the October 18, 2005 Resolution[2] of its Second Division *(CTA-Second Division)*, in CTA Case No. 5290, finding petitioner, the Commissioner of Customs *(Commissioner)*, liable to pay respondent AGFHA Incorporated *(AGFHA)* the amount of US$160,348.08 for the value of the seized shipment which was lost while in petitioner's custody.

On December 12, 1993, a shipment containing bales of textile grey cloth arrived at the Manila International Container Port *(MICP)*. The Commissioner, however, held the subject shipment because its owner/consignee was allegedly fictitious. AGFHA intervened and alleged that it was the owner and actual consignee of the subject shipment.

On September 5, 1994, after seizure and forfeiture proceedings took place, the District Collector of Customs, MICP, rendered a decision[3] ordering the forfeiture of the subject shipment in favor of the government.

AGFHA filed an appeal. On August 25, 1995, the Commissioner rendered a decision[4] dismissing it.

On November 4, 1996, the CTA-Second Division reversed the Commissioner's August 25, 1995 Decision and ordered the

---

[1] *Rollo*, pp. 44-63. Penned by Associate Justice Caesar A. Casanova with Associate Justice Ernesto D. Acosta, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, and Associate Justice Olga Palanca-Enriquez, concurring.

[2] CTA Records, pp. 532-552.

[3] *Id.* at 90-95.

[4] *Id.* at 96-100.

Supreme Court E-Library

immediate release of the subject shipment to AGFHA. The dispositive portion of the CTA-Second Division Decision[5] reads:

> WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **GRANTED**. Accordingly, the decision of the respondent in Customs Case No. 94-017, dated August 25, 1995, affirming the decision of the MICP Collector, dated September 5, 1994, which decreed the forfeiture of the subject shipments in favor of the government, is hereby **REVERSED** and **SET ASIDE**. Respondent is hereby **ORDERED** to effect the immediate **RELEASE** of the subject shipment of goods in favor of the petitioner. No costs.
>
> SO ORDERED.

On November 27, 1996, the CTA-Second Division issued an entry of judgment declaring the above-mentioned decision final and executory.[6]

Thereafter, on May 20, 1997, AGFHA filed a motion for execution.

In its June 4, 1997 Resolution, the CTA-Second Division held in abeyance its action on AGFHA's motion for execution in view of the Commissioner's appeal with the Court of Appeals *(CA)*, docketed as CA-G.R. SP No. 42590 and entitled *"Commissioner of Custom v. The Court of Tax Appeals and AGFHA, Incorporated."*

On May 31, 1999, the CA denied due course to the Commissioner's appeal for lack of merit in a decision,[7] the dispositive portion of which reads:

> WHEREFORE, the instant petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the Commissioner of Customs is hereby ordered to effect the immediate release of the shipment of AGFHA, Incorporated described as "2 x 40"

---

[5] *Id.* at 110-136.

[6] *Id.* at 138.

[7] *Id.* at 279-296. Penned by Associate Justice B.A. Adefuin-De La Cruz with Associate Justice Fermin A. Martin, Jr. and Associate Justice Presbitero J. Velasco, Jr. (now with the Supreme Court), concurring.

Supreme Court E-Library

Cont. No. NYKU-6772906 and NYKU-6632117 STA 197 Bales of Textile Grey Cloth" placed under Hold Order No. H/CI/01/2293/01 dated 22 January 1993.

No costs.

SO ORDERED.

Thereafter, the Commissioner elevated the aforesaid CA Decision to this Court via a petition for review on *certiorari*, docketed as G.R. No. 139050 and entitled *"Republic of the Philippines represented by the Commissioner of Customs v. The Court of Tax Appeals and AGFHA, Inc."*

On October 2, 2001, the Court dismissed the petition.[8]

On January 14, 2002, the Court denied with finality the Commissioner's motion for reconsideration of its October 2, 2001 Decision.

On March 18, 2002, the Entry of Judgment was issued by the Court declaring its aforesaid decision final and executory as of February 5, 2002.

In view thereof, the CTA-Second Division issued the Writ of Execution, dated October 16, 2002, directing the Commissioner and his authorized subordinate or representative to effect the immediate release of the subject shipment. It further ordered the sheriff to see to it that the writ would be carried out by the Commissioner and to make a report thereon within thirty (30) days after receipt of the writ. The writ, however, was returned unsatisfied.

On July 23, 2003, the CTA-Second Division received a copy of AGFHA's Motion to Show Cause dated July 21, 2003.

Acting on the motion, the CTA-Second Division issued a notice setting it for hearing on August 1, 2003 at 9:00 o'clock in the morning.

In its August 13, 2003 Resolution, the CTA-Second Division granted AGFHA's motion and ordered the Commissioner to

[8] SC Decision, *id.* at 462-473.

Supreme Court E-Library

show cause within fifteen (15) days from receipt of said resolution why he should not be disciplinary dealt with for his failure to comply with the writ of execution.

On September 1, 2003, Commissioner's counsel filed a Manifestation and Motion, dated August 28, 2003, attaching therewith a copy of an Explanation (With Motion for Clarification) dated August 11, 2003 stating, *inter alia*, that despite diligent efforts to obtain the necessary information and considering the length of time that had elapsed since the subject shipment arrived at the Bureau of Customs, the Chief of the Auction and Cargo Disposal Division of the MICP could not determine the status, whereabouts and disposition of said shipment.

Consequently, AGFHA filed its Motion to Cite Petitioner in Contempt of Court dated September 13, 2003. After a series of pleadings, on November 17, 2003, the CTA-Second Division denied, among others, AGFHA's motion to cite petitioner in contempt for lack of merit. It, however, stressed that the denial was without prejudice to other legal remedies available to AGFHA.

On August 13, 2004, the Commissioner received AGFHA's Motion to Set Case for Hearing, dated April 12, 2004, allegedly to determine: (1) whether its shipment was actually lost; (2) the cause and/or circumstances surrounding the loss; and (3) the amount the Commissioner should pay or indemnify AGFHA should the latter's shipment be found to have been actually lost.

On May 17, 2005, after the parties had submitted their respective memoranda, the CTA-Second Division adjudged the Commissioner liable to AGFHA. Specifically, the dispositive portion of the resolution reads:

> WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, INC. for the value of the subject shipment in the amount of ONE HUNDERED SIXTY THOUSAND THREE HUNDRED FORTY EIGHT AND 08/100 US DOLLARS (US$160,348.08). The Bureau of Custom's liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality

Supreme Court E-Library

of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.

The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.

SO ORDERED.[9]

On June 10, 2005, the Commissioner filed his Motion for Partial Reconsideration arguing that (a) the enforcement and satisfaction of respondent's money claim must be pursued and filed with the Commission on Audit pursuant to Presidential Decree (P.D.) No. 1445; (b) respondent is entitled to recover only the value of the lost shipment based on its acquisition cost at the time of importation; and (c) taxes and duties on the subject shipment must be deducted from the amount recoverable by respondent.

On the same day, the Commissioner received AGFHA's Motion for Partial Reconsideration claiming that the 12% interest rate should be computed from the time its shipment was lost on June 15, 1999 considering that from such date, petitioner's obligation to release their shipment was converted into a payment for a sum of money.

On October 18, 2005, after the filing of several pleadings, the CTA-Second Division promulgated a resolution which reads:

WHEREFORE, premises considered, respondent Commissioner of Customs' "Motion for Partial Reconsideration" is hereby **PARTIALLY GRANTED**. The Resolution dated May 17, 2005 is hereby **MODIFIED** but only insofar as the Court did not impose the payment of the proper duties and taxes on the subject shipment. Accordingly, the dispositive portion of Our Resolution, dated May 17, 2005, is hereby **MODIFIED** to read as follows:

> WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, INC. for the value of the subject shipment in the amount of ONE HUNDRED SIXTY

[9] *Id.* at 460-461.

Supreme Court E-Library

> THOUSAND THREE HUNDRED FORTY–EIGHT AND 08/100 US DOLLARS (US$160,348.08), subject however, to the payment of the prescribed taxes and duties, at the time of the importation. The Bureau of Custom's liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.
>
> The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.
>
> SO ORDERED.
>
> Petitioner AGFHA, Inc.'s "Motion for Partial Reconsideration" is hereby DENIED for lack of merit.
>
> SO ORDERED.[10]

Consequently, the Commissioner elevated the above-quoted resolution to the CTA-En Banc.

On February 25, 2009, the CTA-En Banc promulgated the subject decision dismissing the petition for lack of merit and affirming *in toto* the decision of the CTA-Second Division.

On March 18, 2009, the Commissioner filed his Motion for Reconsideration, but it was denied by the CTA-En Banc in its April 13, 2009 Resolution.

Hence, this petition.

ISSUE

Whether or not the Court of Tax Appeals was correct in awarding the respondent the amount of US$160,348.08, as payment for the value of the subject lost shipment that was in the custody of the petitioner.

In his petition, the Commissioner basically argues two (2) points: 1] the respondent is entitled to recover the value of the

[10] *Id.* at 551-552.

Supreme Court E-Library

lost shipment based only on its acquisition cost at the time of importation; and 2] the present action has been theoretically transformed into a suit against the State, hence, the enforcement/ satisfaction of petitioner's claim must be pursued in another proceeding consistent with the rule laid down in P.D. No. 1445.

He further argues that the basis for the exchange rate of its liability lacks basis. Based on the Memorandum, dated August 27, 2002, of the Customs Operations Officers, the true value of the subject shipment is US$160,340.00 based on its commercial invoices which have been found to be spurious. The subject shipment arrived at the MICP on December 12, 1992 and the peso-dollar exchange rate was ₱20.00 per US$1.00. Thus, this conversion rate must be applied in the computation of the total land cost of the subject shipment being claimed by AGFHA or ₱3,206,961.60 plus interest.

The Commissioner further contends that based on Executive Order No. 688 (The 1999 Tariff and Customs Code of the Philippines), the proceeds from any legitimate transaction, conveyance or sale of seized and/or forfeited items for importations or exportations by the customs bureau cannot be lawfully disposed of by the petitioner to satisfy respondent's money judgment. EO 688 mandates that the unclaimed proceeds from the sale of forfeited goods by the Bureau of Customs *(BOC)* will be considered as customs receipts to be deposited with the Bureau of Treasury and shall form part of the general funds of the government. Any disposition of the said unclaimed proceeds from the sale of forfeited goods will be violative of the Constitution, which provides that "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[11]

Thus, the Commissioner posits that this case has been transformed into a suit against the State because the satisfaction of AGFHA's claim will have to be taken from the national coffers. The State may not be sued without its consent. The

[11] Section 29 (1), Article VI of the 1987 Philippine Constitution.

Supreme Court E-Library

BOC enjoys immunity from suit since it is invested with an inherent power of sovereignty which is taxation.

To recover the alleged loss of the subject shipment, AGFHA's remedy here is to file a money claim with the Commission on Audit *(COA)* pursuant to Act No. 3083 (An Act Defining the Condition under which the Government of the Philippine Island may be Sued) and Commonwealth Act No. 327 (An Act Fixing the Time within which the Auditor General shall render his Decisions and Prescribing the Manner of Appeal therefrom, as amended by P.D. No. 1445). Upon the determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines.

On the other hand, AGFHA counters that, in line with prevailing jurisprudence, the applicable peso-dollar exchange rate should be the one prevailing at the time of actual payment in order to preserve the real value of the subject shipment to the date of its payment. The CTA-En Banc Decision does not constitute a money claim against the State. The Commissioner's obligation to return the subject shipment did not arise from an import-export contract but from a quasi-contract particularly *solutio indebiti* under Article 2154 of the Civil Code. The payment of the value of the subject lost shipment was in accordance with Article 2159 of the Civil Code. The doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen. When the State violates its own laws, it cannot invoke the doctrine of state immunity to evade liability. The commission of an unlawful or illegal act on the part of the State is equivalent to implied consent.

THE COURT'S RULING

The petition lacks merit.

The Court agrees with the ruling of the CTA that AGFHA is entitled to recover the value of its lost shipment based on the acquisition cost at the time of payment.

Supreme Court E-Library

In the case of *C.F. Sharp and Co., Inc. v. Northwest Airlines, Inc.* the Court ruled that the rate of exchange for the conversion in the peso equivalent should be the prevailing rate at the time of payment:

> In ruling that the applicable conversion rate of petitioner's liability is the rate at the time of payment, the Court of Appeals cited the case of *Zagala v. Jimenez*, interpreting the provisions of Republic Act No. 529, as amended by R.A. No. 4100. Under this law, stipulations on the satisfaction of obligations in foreign currency are void. Payments of monetary obligations, subject to certain exceptions, shall be discharged in the currency which is the legal tender in the Philippines. But since R.A. No. 529 does not provide for the rate of exchange for the payment of foreign currency obligations incurred after its enactment, the Court held in a number of cases that **the rate of exchange for the conversion in the peso equivalent should be the prevailing rate at the time of payment**.[12] [Emphases supplied]

Likewise, in the case of *Republic of the Philippines represented by the Commissioner of Customs v. UNIMEX Micro-Electronics GmBH,*[13] which involved the seizure and detention of a shipment of computer game items which disappeared while in the custody of the Bureau of Customs, the Court upheld the decision of the CA holding that petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment.

On the issue regarding the state immunity doctrine, the Commissioner cannot escape liability for the lost shipment of goods. This was clearly discussed in the *UNIMEX Micro-Electronics GmBH* decision, where the Court wrote*:*

> Finally, petitioner argues that a money judgment or any charge against the government requires a corresponding appropriation and cannot be decreed by mere judicial order.
>
> Although it may be gainsaid that the satisfaction of respondent's demand will ultimately fall on the government, and that, under the political doctrine of "state immunity," it cannot be held liable for

---

[12] 431 Phil. 11, 18 (2002).

[13] G.R. Nos. 166309-10, March 9, 2007, 518 SCRA 19.

governmental acts (*jus imperii*), we still hold that petitioner cannot escape its liability. The circumstances of this case warrant its exclusion from the purview of the state immunity doctrine.

As previously discussed, the Court cannot turn a blind eye to BOC's ineptitude and gross negligence in the safekeeping of respondent's goods. We are not likewise unaware of its lackadaisical attitude in failing to provide a cogent explanation on the goods' disappearance, considering that they were in its custody and that they were in fact the subject of litigation. The situation does not allow us to reject respondent's claim on the mere invocation of the doctrine of state immunity. Succinctly, the doctrine must be fairly observed and the State should not avail itself of this prerogative to take undue advantage of parties that may have legitimate claims against it.

In *Department of Health v. C.V. Canchela & Associates*, we enunciated that this Court, as the staunch guardian of the people's rights and welfare, cannot sanction an injustice so patent in its face, and allow itself to be an instrument in the perpetration thereof. Over time, courts have recognized with almost pedantic adherence that what is inconvenient and contrary to reason is not allowed in law. Justice and equity now demand that the State's cloak of invincibility against suit and liability be shredded.

Accordingly, we agree with the lower courts' directive that, upon payment of the necessary customs duties by respondent, petitioner's "payment shall be taken from the sale or sales of goods or properties seized or forfeited by the Bureau of Customs."

WHEREFORE, the assailed decisions of the Court of Appeals in CA-G.R. SP Nos. 75359 and 75366 are hereby AFFIRMED with MODIFICATION. Petitioner Republic of the Philippines, represented by the Commissioner of the Bureau of Customs, upon payment of the necessary customs duties by respondent Unimex Micro-Electronics GmBH, is hereby ordered to pay respondent the value of the subject shipment in the amount of Euro 669,982.565. Petitioner's liability may be paid in Philippine currency, computed at the exchange rate **prevailing <u>at the time of actual payment</u>**.

SO ORDERED.[14] [Emphases supplied]

---

[14] *Id.* at 32-34.

Supreme Court E-Library

In line with the ruling in *UNIMEX Micro-Electronics GmBH*, the Commissioner of Customs should pay AGFHA the value of the subject lost shipment in the amount of US$160,348.08 which liability may be paid in Philippine currency computed at the exchange rate prevailing at the time of the actual payment.

WHEREFORE, the February 25, 2009 Decision of the Court of Tax Appeals *En Banc*, in CTA EB Case No. 136, is *AFFIRMED.* The Commissioner of Customs is hereby ordered to pay, in accordance with law, the value of the subject lost shipment in the amount of US$160,348.08, computed at the exchange rate prevailing at the time of actual payment after payment of the necessary customs duties.

SO ORDERED.

Carpio (Chairperson), Peralta, Bersamin,[*] and *Abad, JJ.*, concur.

EN BANC

[A.M. No. P-09-2637. March 29, 2011]
(Formerly A.M. No. 08-12-682-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. MAGDALENA L. LOMETILLO, Former Clerk of Court VII, VICTORIA S. PATOPATEN, Cashier II, LINDA C. GUIDES, Administrative Officer I, LENNY GEMMA P. CASTILLO, Clerk III, and BRENDA M. LINACERO, Clerk III, All of Regional Trial Court, Iloilo City,** *respondents.*

---

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated July 15, 2009.