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entitled to moral damages in the amount of Fifty Thousand Pesos (₱50,000.00) without need for proof of the basis thereof.[23]

WHEREFORE, the assailed Decision of the Regional Trial Court of Tarlac, Branch 63, Tarlac, Tarlac finding accused-appellant Fernando Muerong guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*, with all the accessory penalties provided by law and ordering him to pay civil indemnity to the heirs of the victim, Rudy Pascua, in the amount of Fifty Thousand Pesos (₱50,000.00) is hereby *AFFIRMED* with the modification that accused-appellant is further ordered to pay the heirs of the victim moral damages in the amount of Fifty Thousand Pesos (₱50,000.00).

SO ORDERED.

Bellosillo (Chairman), Mendoza, and *Buena, JJ.*, concur.

Quisumbing, J., official leave.

SECOND DIVISION

[G.R. No. 134114. July 6, 2001]

NESTLE PHILIPPINES, INC., (FORMERLY FILIPRO, INC.) *petitioner, vs.* **HONORABLE COURT OF APPEALS, COURT OF TAX APPEALS and COMMISSIONER OF CUSTOMS,** *respondents.*

SYNOPSIS

Petitioner Nestle Philippines, Inc. transacted sixteen separate importations of milk and milk products from different countries

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[23] *People v. Ybañez*, G.R. No. 136257, February 14, 2001; *People v. Delamar*, G.R. No. 136102, January 31, 2001.

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between the period of July and November 1984. It paid the corresponding customs duties and advance sales taxes to the Collector of Customs of Manila for each transaction based on the published Home Consumption Value (HCV) as indicated in the Bureau of Customs Revision Orders, but it seasonably filed the corresponding protests before the said Collector of Customs. In the said protests, petitioner claimed for the refund of the alleged overpaid import duties and advance sales taxes. With regards to the advance sales taxes, the Court of Tax Appeals eventually ruled in favor of the petitioner. However, the Collector of Customs failed to render a decision on the sixteen protest cases for almost six years for the alleged overpaid customs duties. In order to prevent the claims from becoming stale on the ground of prescription, petitioner immediately filed a petition for review with the Court of Tax Appeals (CTA). The CTA dismissed the said petition for want of jurisdiction. The issue was raised to the Court of Appeals by way of petition for review, but it was also dismissed for failure to exhaust administrative remedies. Hence, this petition

The Court ruled that the remand of this case to the CTA is warranted for the proper verification and determination of the *factual basis and merits* of the petition and in order that the ends of substantial justice and fair play may be subserved. In the light of Sections 2308 and 2309 of the Tariff and Customs Code, it appeared that in all cases subject to protest, the claim for refund of customs duties may be foreclosed only when the interested party claiming refund fails to file a written protest before the Collector of Customs. Accordingly, once a written protest is seasonably filed with the Collector of Customs the failure or inaction of the latter to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, *if any is proven*, and thereby enrich itself at the expense of the taxpayers. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, *if any*, of such taxes. Indeed the state must lead by its own example of honor, dignity and uprightness. Thus, in order for the rule on *solutio indebiti* to apply, it is an essential condition that petitioner must first show that its payment of the customs duties was in excess of what was

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required by the law at the time when the subject sixteen (16) importations of milk and milk products were made. Unless shown otherwise, the disputable presumption of regularity of performance of duty lies in favor of the Collector of Customs.

SYLLABUS

1. **TAXATION; TARIFF AND CUSTOMS CODE; CLAIM FOR REFUND AND DUTIES; PROPER PROCEDURE.**— It is clear from [Section 1708] of the Tariff and Customs Code that *in all claims for refund of customs duties,* the *Collector* to whom such customs duties are paid and *upon receipt* of such claim is mandated to verify the same by the records of his Office. If such claim is found correct and in accordance with law, the Collector *shall certify* the same to the Commissioner *with his recommendation* together with all the necessary papers and documents.

2. **ID.; ID.; ID.; CTA'S JURISDICTION IS NOT CONCURRENT WITH THE COMMISSIONER OF CUSTOMS.**— This is precisely one of the reasons why the Court of Appeals upheld the dismissal of the case on the ground that the CTA's jurisdiction under the Tariff and Customs Code is not concurrent with that of the respondent Commissioner of Customs due to the absence of any certification from the Collector of Customs of Manila. Accordingly, petitioner's contention that its claims for refund of alleged overpayment of customs duties may be deemed established from the findings of the tax court in C.T.A. Case No. 4114 on the Advance Sales Tax is not necessarily correct in the light of the above-cited provision of the Tariff and Customs Code.

3. **ID.; ID.; ID.; MUST BE STRICTLY CONSTRUED AGAINST THE CLAIMANTS.**— *"Customs duties"* is "the name given *to taxes on the importation and exportation of commodities,* the tariff or tax assessed upon merchandise imported from, or exported to, a foreign country. Any claim for refund of customs duties, therefore, take the nature of tax exemptions that must be construed *strictissimi juris* against the claimants and liberally in favor of the taxing authority. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed. Any reduction or diminution thereof with respect to its mode or its rate must be strictly construed, and the same must be couched in clear and unmistakable terms in order that it may be applied.

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4. **ID.; ID.; ID.; OUTRIGHT AWARD FOR THE REFUND OF OVERPAID CUSTOMS DUTIES IS NOT FAVORED.—** [A]ny outright award for the refund of allegedly overpaid customs duties in favor of petitioner on its subject sixteen (16) importations is not favored in this jurisdiction unless there is a direct and clear finding thereon. The fact alone that the tax court, in C.T.A. Case No. 4114, has awarded in favor of the petitioner the refund of overpaid Advance Sales Tax involving the same sixteen (16) importations does not in any way excuse the petitioner from proving its claims for refund of alleged overpayment of customs duties. We have scrutinized the decision rendered by the tax court in C.T.A. Case No. 4114 and found no clear indication therein that the tax court has ruled on petitioner's claims for alleged overpayment of customs duties.

5. **ID.; ID.; ID.; NOT GOVERNED BY RULES ON QUASI-CONTRACT OR *SOLUTIO INDEBITI*.—** The petitioner is mistaken in its contention that its claims for refund of allegedly overpaid customs duties are governed by Article 2154 of the New Civil Code on quasi-contract, or the rule on *solutio indebiti,* which prescribes in six (6) years pursuant to Article 1145 of the same Code.

6. **ID.; ID.; ID.; ID.; FOR *SOLUTIO INDEBITI* TO APPLY IT IS ESSENTIAL THAT PETITIONER MUST FIRST SHOW THAT THE PAYMENT OF THE CUSTOMS DUTIES WAS IN EXCESS OF WHAT WAS REQUIRED BY LAW.—** In order for the rule on *solutio indebiti* to apply it is an essential condition that petitioner must first show that its payment of the customs duties was in excess of what was required by the law at the time when the subject sixteen (16) importations of milk and milk products were made. Unless shown otherwise, the disputable presumption of regularity of performance of duty lies in favor of the Collector of Customs.

7. **ID.; ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.—** In the present case, there is no factual showing that the collection of the alleged overpaid customs duties was more than what is required of the petitioner when it made the aforesaid separate importations. There is no factual finding yet by the government agency concerned that petitioner is indeed entitled to its claim of overpayment and, if true, for how much it is entitled. It bears stress that in determining whether or not petitioner is entitled to refund of alleged overpayment of customs duties, it is necessary

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to determine exactly how much the Government is entitled to collect as customs duties on the importations. Thus, it would only be just and fair that the petitioner-taxpayer and the Government alike be given equal opportunities to avail of the remedies under the law to contest or defeat each other's claim and to determine all matters of dispute between them in one single case. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, *if truly proven*, of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.

8. **ID.; ID.; ID.; MAY BE FORECLOSED WHEN THE INTERESTED PARTY FAILED TO FILE A WRITTEN PROTEST BEFORE THE COLLECTOR OF CUSTOMS.**— In the light of [Sections 2308 and 2309] of the Tariff and Customs Code, it appears that in all cases subject to protest, the claim for refund of customs duties may be foreclosed only when the interested party claiming refund fails to file a written protest before the Collector of Customs. This written protest which must set forth the claimant's objection to the ruling or decision in question together with the reasons therefor must be made either at the time when payment of the amount claimed to be due the government is made or within fifteen (15) days thereafter. In conjunction with this right of the claimant is the duty of the Collector of Customs to hear and decide such protest in accordance and within the period of time prescribed by the law.

9. **ID.; ID.; ID.; ONCE A WRITTEN PROTEST IS SEASONABLY FILED, INACTION OF THE COLLECTOR OF CUSTOMS WILL NOT PREJUDICE THE RIGHT OF CLAIMANT.**— Accordingly, once a written protest is seasonably filed with the Collector of Customs the failure or inaction of the latter to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, *if any is proven,* and thereby enrich itself at the expense of the taxpayers. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, *if any,* of such taxes. Indeed the State must lead by its own example of honor, dignity and uprightness.

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APPEARANCES OF COUNSEL

Dennis M. Taningco for petitioner.
The Solicitor General for 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 (₱5,008,029.00).

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

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[1] Seventh Division, J. Minerva Gonzaga-Reyes (now an Associate Justice of the Supreme Court), *ponente*, and concurred in by Associate Justices Eubulo G. Versola and Maximiano C. Asuncion.

[2] *Rollo*, pp. 65-73.

[3] Penned by Associate Judge Manuel K. Gruba and concurred in by Ernesto D. Acosta, Presiding Judge, and Ramon O. de Veyra, Associate Judge.

[4] *Rollo*, pp. 112-121.

[5] *Rollo*, pp. 94-96.

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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 (₱5,008,029.00) and advance sales taxes aggregating to Four Million Five Hundred Sixty-Four Thousand One Hundred Seventy-Nine Pesos and Thirty Centavos (₱4,564,179.30).

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 (₱4,564,179.30) 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 (₱4,489,661.94) 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 (₱5,008,029.00) 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.

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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.

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[6] *Rollo*, pp. 112-121.

[7] *Rollo*, pp. 135-141.

[8] *Supra*, note no. 5.

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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, NOT-WITHSTANDING 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 ₱5,008,029.08 (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 OVER-PAYMENTS OF DUTIES AND TAXES, AND UPON WHICH, IT ORDERED THE REFUND OF ₱4,489,661.94 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

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[9] ART. 1145 – The following actions must be commenced within six years:

1. Upon an oral contract;
2. Upon a quasi-contract.

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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 (₱4,489,661.94), 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.

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[10] ART. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

[11] *Rollo*, pp. 169-179.

[12] *Rollo*, pp. 200-212.

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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.

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[13] *Rollo*, pp. 241-245.

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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 paid and *upon receipt* of such claim is mandated to verify the same by the records of his Office. If such claim is found correct and in accordance with law, the Collector *shall certify* the same to the Commissioner *with his recommendation* together with all the necessary papers and documents. This is precisely one of the reasons why the Court of Appeals upheld the dismissal of the case on the ground that the CTA's jurisdiction[14] under the Tariff and Customs Code is not concurrent with that of the respondent Commissioner of Customs due to the absence of any certification from the Collector of Customs of Manila. Accordingly, petitioner's contention that its claims for refund of alleged overpayment of customs duties may be deemed established from the findings of the tax court in C.T.A. Case No. 4114 on the Advance Sales Tax is not necessarily correct in the light of the above-cited provision of the Tariff and Customs Code.

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[14] Sec. 2402. *Review by Court of Tax Appeals.* – The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations.

Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive.

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"*Customs duties*" is 'the name given to *taxes on the importation and exportation of commodities*, the tariff or tax assessed upon merchandise imported from, or exported to, a foreign country.'[15] Any claim for refund of customs duties, therefore, take the nature of tax exemptions that must be construed *strictissimi juris* against the claimants and liberally in favor of the taxing authority.[16] This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed. Any reduction or diminution thereof with respect to its mode or its rate must be strictly construed, and the same must be couched in clear and unmistakable terms in order that it may be applied.[17]

Thus, any outright award for the refund of allegedly overpaid customs duties in favor of petitioner on its subject sixteen (16) importations is not favored in this jurisdiction unless there is a direct and clear finding thereon. The fact alone that the tax court, in C.T.A. Case No. 4114, has awarded in favor of the petitioner the refund of overpaid Advance Sales Tax involving the same sixteen (16) importations does not in any way excuse the petitioner from proving its claims for refund of alleged overpayment of customs duties. We have scrutinized the decision rendered by the tax court in C.T.A. Case No. 4114 and found no clear indication therein that the tax court has ruled on petitioner's claims for alleged overpayment of customs duties.

The petitioner is mistaken in its contention that its claims for refund of allegedly overpaid customs duties are governed by Article 2154[18] of the New Civil Code on quasi-contract, or the rule on

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[15] *Garcia v. Executive Secretary*, 211 SCRA 219, 227 (1992) citing *U.S. v. Sischo,* 262 Fed. 1001 (1919); *Flint v. Stone Tracey Company*, 220 US 107 (1910); *Keller-Dorian Corp. v. Commissioner of Internal Rev*enue, 153 F2d 1006 (1946) and *Pollock v. Farmers' Loan and Trust Company* 158 US 601; 39 Law Ed. 1108 (1895).

[16] See *Commission of Internal Revenue v. Tokyo Shipping Co., Ltd.*, 244 SCRA 332, 336 (1995); *Esso Standard Eastern, Inc. v. Acting Commissioner of Customs,* 18 SCRA 488 (1966).

[17] *Philippine Telegraph and Telephone Corp. v. COA*, 146 SCRA 190, 196-197 (1986).

[18] Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

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solutio indebiti, which prescribes in six (6) years pursuant to Article 1145 of the same Code.

Sections 2308 and 2309 of the Tariff and Customs Code provide that:

"Sec. 2308. *Protest and Payment upon Protest in Civil Matter.– When a ruling or decision of the collector is made whereby liability for duties*, taxes, fees, or other charges *are determined,* except the fixing of fines in seizure cases, *the party adversely affected may protest such ruling or decision* by presenting to the Collector *at the time when payment* of the amount claimed to be due the government *is made, or within fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee,* as provided for in Section 3301."

"Sec. 2309. *Protest Exclusive Remedy in Protestable Case.—In all cases subject to protest, the interested party* who desires to have the action of the collector reviewed, *shall make a protest, otherwise, the action of the collector shall be final and conclusive against him,* x x x."

"SEC. 2312. *Decision or Action by the collector in Protest and Seizure Cases.* - When a protest in a proper form is presented in a case where protest is required, *the collector shall* issue an *order for hearing within fifteen (15) days from receipt of the protest and hear the matter thus presented.* Upon termination of the hearing, *the Collector shall render a decision within thirty (30) days,* and if the protest is sustained, in whole or in part, he shall make the appropriate order, the entry reliquidated necessary. x x x."

In the light of the above-cited provisions of the Tariff and Customs Code, it appears that in all cases subject to protest, the claim for refund of customs duties may be foreclosed only when the interested party claiming refund fails to file a written protest before the Collector of Customs. This written protest which must set forth the claimant's objection to the ruling or decision in question together with the reasons therefor must be made either at the time when payment of the amount claimed to be due the government is made or within fifteen (15) days thereafter. In conjunction with this right of the claimant is the duty of the

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Collector of Customs to hear and decide such protest in accordance and within the period of time prescribed by the law.

Accordingly, once a written protest is seasonably filed with the Collector of Customs the failure or inaction of the latter to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, *if any is proven*, and thereby enrich itself at the expense of the taxpayers. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, *if any*, of such taxes. Indeed the State must lead by its own example of honor, dignity and uprightness.

Here, it is undisputed that the inaction of the Collector of Customs of Manila for nearly six (6) years on the protests seasonably filed by the petitioner has caused the latter to immediately resort to the CTA. The petitioner did so on the mistaken belief that its claims are governed by the rule on quasi-contract or *solutio indebiti* which prescribes in six (6) years under Article 1145 of the New Civil Code.

This belief or contention of the petitioner is misplaced. In order for the rule on *solutio indebiti* to apply it is an essential condition that petitioner must first show that its payment of the customs duties was in excess of what was required by the law at the time when the subject sixteen (16) importations of milk and milk products were made. Unless shown otherwise, the disputable presumption of regularity of performance of duty lies in favor of the Collector of Customs.

In the present case, there is no factual showing that the collection of the alleged overpaid customs duties was more than what is required of the petitioner when it made the aforesaid separate importations. There is no factual finding yet by the government agency concerned that petitioner is indeed entitled to its claim of overpayment and, if true, for how much it is entitled. It bears stress that in determining whether or not petitioner is entitled to refund of alleged overpayment of customs duties, it is necessary

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to determine exactly how much the Government is entitled to collect as customs duties on the importations. Thus, it would only be just and fair that the petitioner-taxpayer and the Government alike be given equal opportunities to avail of the remedies under the law to contest or defeat each other's claim and to determine all matters of dispute between them in one single case.[19] If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, *if truly proven*, of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.

The ratiocination of the Court of Appeals is in accord with a ruling of this Court which is applicable to the case at bar, to wit:

"As stated by the respondent court in its Resolution dated January 6, 1997, the *petitioner's claim cannot be deemed to prescribe because the Collector of Customs has not acted on the protest, and the period for filing an appeal to the Commissioner of Customs has not commenced to run.* Moreover, delay or inaction of a subordinate official, does not constitute an exception to the afore-cited principle as the delay should be brought to the attention of a superior administrative officer for immediate adjudication (*Commissioner of Immigration vs. Vamenta, Jr.*, 54 SCRA 342; *Barte vs. Dichoso*, 47 SCRA 77)."

WHEREFORE, the assailed Decision dated September 23, 1997 of the Court of Appeals in CA-G.R. SP. No. 43188 is hereby *SET ASIDE*; and C.T.A. Case No. 4478 is *REINSTATED* and *REMANDED* to the Court of Tax Appeals for hearing and reception of evidence relative to petitioner's claims for refund of alleged overpayment of customs duties. The Court of Tax Appeals is directed to dispose of the said case with dispatch.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and *Buena, JJ.*, concur.

Quisumbing, J., on official leave.

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[19] *Commissioner of Internal Revenue v. Court of Tax Appeals*, 234 SCRA 348, 358 (1994).