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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
DEC 19 2016

THIRD DIVISION
Agenda of December 5 , 2016
Item No. 325

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

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DISSENTING OPINION

PERALTA, *J.*:

The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions.[1] Under this doctrine, when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases.[2] With all due respect to my colleagues, it is on this settled principle and in this context that I register my dissent from the *ponencia*.

At the outset, a brief account of the undisputed factual and procedural antecedents that transpired and led to the filing of this case is in order.

Petitioner Pilipinas Shell Petroleum Corporation is a domestic corporation engaged in the business of importing crude oil, of processing it into different finished petroleum products and, thereafter, distributing and marketing these finished products.

On April 7, 1996, petitioner's importation of 1,979,674.85 US barrels of Arab Light Crude Oil arrived in the Philippines through vessels which docked at a wharf it owns and operates.

On April 10, 1996, three days after the arrival of its importation, the shipments were unloaded and brought to petitioner's oil tanks in Batangas City.

On May 23, 1996, forty-three (43) days from the date of discharge of its importation, petitioner filed the required Import Entry and Internal

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1 *Ty v. Banco Filipino Savings and Mortgage Bank,* 689 Phil. 603, 613 (2012).

2 *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation,* 573 Phil. 320, 336 (2008).

Revenue Declaration (*IEIRD*) and paid import duty in the amount of ₱11,231,081.00.

In the meantime, on April 16, 1996, Republic Act No. 8180 (RA 8180), otherwise known as the *Downstream Oil Industry Deregulation Act of 1996,* took effect, which, among others, provided for the reduction of the tariff duty on imported crude oil from ten percent (10%) to three percent (3%).

On August 1, 2000, petitioner received a demand letter from the Bureau of Customs (*BOC*), coursed through the District Collector of Batangas, assessing it the amount of ₱120,162,991.00, representing deficiency customs duties resulting from the difference between the customs duties due computed at the old rate of 10% (prior to the effectivity of RA 8180) and the actual amount of duties paid by petitioner at the rate of 3%.

Petitioner protested the assessment but was denied by the District Collector. Petitioner appealed the District Collector's decision to herein respondent Commissioner of Customs.

Thereafter, on October 29, 2001, petitioner received from respondent a demand letter for the payment of the amount of ₱936,899,885.90, representing the dutiable value of the subject crude oil importation which was held to be abandoned for petitioner's failure to file the required import entry on time.

On November 7, 2001, petitioner filed a protest contending that the demand letter has no factual and legal basis, and that such demand has already prescribed.

Subsequently, on April 11, 2002 the BOC filed a civil action for collection of a sum of money against petitioner and Caltex Philippines, Inc., which also made crude oil importations like petitioner, for their refusal to pay the dutiable value of their importations which they have consumed.[3]

On May 27, 2002, petitioner filed a petition for review with the Court of Tax Appeals (*CTA*) questioning the BOC's demand letters which required petitioner to pay deficiency customs duties as well as the dutiable value of its 1996 crude oil importation. The case was raffled to the CTA First Division.

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[3] The BOC's Complaint was filed with the Regional Trial Court of Manila, Branch 25 and was docketed as Civil Case No. 02-103239; *rollo,* pp. 724-730.

On June 19, 2008, the CTA First Division promulgated its Decision[4] dismissing petitioner's petition for review for lack of merit. Petitioner's motion for reconsideration was denied in a Resolution[5] issued by the CTA First Division on February 24, 2009.

Petitioner then filed a petition for review with the CTA Former En Banc.

On May 13, 2010, the CTA Former *En Banc* promulgated its Decision[6] dismissing petitioner's petition for review and affirming with modification the CTA First Division's assailed Decision and Resolution by imposing 6% interest on the sum awarded from the date of promulgation until finality of the decision and 12% interest from finality of the decision until full satisfaction.

Aggrieved, petitioner filed a motion for reconsideration which was, however, denied for lack of merit by the CTA Former *En Banc* in its Resolution[7] dated February 22, 2011.

Hence, the present petition for review on *certiorari.*

The basic issue that needs to be resolved in the instant petition is whether or not respondent may still recover from petitioner the dutiable value of the latter's crude oil importation which it has consumed despite its having been deemed abandoned by operation of law.

The *ponencia* rules that "there being no evidence to prove that petitioner committed fraud in belatedly filing its [Import Entry and Internal Revenue Declaration] (*IEIRD*) within the 30-day period prescribed under Section 1301 of the [Tariff and Customs Code of the Philippines] (*TCCP*), as amended, respondent's right to question the propriety thereof and to collect the amount of the alleged deficiency customs duties, **more so the entire value of the subject shipment**, have already prescribed."[8]

I take exception to the above pronouncement as it is my considered view that it runs counter to the pertinent provisions of the TCCP and of this

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4 Penned by Associate Justice Caesar A. Casanova, with the concurrence of Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista; *rollo,* pp. 341-353.

5 *Id.* at 354-358.

6 Penned by Associate Justice Olga Palanca-Enriquez, with the concurrence of Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista and Erlinda P. Uy; *id.* at 131-156.

7 Penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justices Erlinda P. Uy and Caesar A. Casanova; *id.* at 157-171, Associate Justice Olga Palanca-Enriquez dissented and she was joined by Presiding Justice Ernesto D. Acosta and Lovell R. Bautista; *id.* at 172-186.

8 Emphasis supplied.

Court's ruling in the leading case of *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs (Chevron).*[9]

It bears stressing that the basic facts of the present case and those of *Chevron*, which the Court follows as precedent, are practically the same. As in *Chevron*, the imported crude oil subject of the present case arrived in the Philippines[10] and was discharged from the carrying vessels prior to the effectivity of RA 8180.[11] The import entries in both cases were filed beyond the 30-day period required under Section 1301 of the TCCP. In fact, it is on the basis of the facts obtaining in these importations of petitioner and Chevron (then known as Caltex Phils., Inc.) that only one civil suit for collection of the dutiable value of the imported articles was filed by the BOC against these two corporations as defendants. It is from this factual backdrop and the ensuing demand by the BOC to collect the dutiable value of the importations that the case of *Chevron* reached this Court and was ultimately decided in favor of the BOC. Thus, since the present case and the case of *Chevron* basically arise from the same factual circumstances, it is the Court's duty to apply the ruling in *Chevron* to the present case. In *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation,*[12] this Court ruled as follows:

> Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Stare decisis et non quieta movere. Stand by the decisions and disturb not what is settled. Stare decisis simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisisis a bar to any attempt to relitigate the same issue.[13]

Nonetheless, petitioner contends that the ruling in *Chevron* does not apply to the present case and relies on the provisions of Section 1603 of the TCCP, which provides as follows:

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9 583 Phil. 706 (2008). The *ponencia* was penned by former Chief Justice Renato C. Corona, with the concurrence of former Chief Justice Reynato S. Puno and Associate Justices Antonio T. Carpio, Ma. Alicia Austria-Martinez and Teresita J. Leonardo-De Castro.

10 Chevron's importations arrived separately on March 8, 1996, March 18, 1996, March 21, 1996, March 26, 1996 and April 10, 1996, while petitioner's importation arrived on April 7, 1996.

11 Chevron's and petitioner's importations were unloaded from the carrying vessels three (3) days after their arrival.

12 *Supra* note 2.

13 *Id.* at 337.

> Section 1603. *Finality of Liquidation.* When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of one (1) year, from the date of the final payment of duties, in the absence of fraud or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.

On the other hand, Sections 1301, 1801 and 1802 of the TCCP, as amended by Republic Act No. 7651(RA 7651),[14] also provide:

> Section 1301. *Persons Authorized to Make Import Entry.* – **Imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, from date of discharge of the last package from the vessel or aircraft** either (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a holder of the bill or (c) by a person duly empowered to act as agent or attorney-in-fact for each holder: Provided, That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: Provided, further, That such statements under oath shall constitute *prima facie* evidence of knowledge and consent of the importer of violation against applicable provisions of this Code when the importation is found to be unlawful.
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> Section 1801. *Abandonment, Kinds and Effect of.* **An imported article is deemed abandoned under any of the following circumstances**:
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> a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or
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> b. **When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft,** or having filed such entry, fails to claim his importation within fifteen (15) days which shall not likewise be extendible, from the date of posting of the notice to claim such importation.
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> **Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein.**
>
> Section 1802. *Abandonment of Imported Articles.* – **An abandoned article shall ipso facto be deemed the property of the Government and shall be disposed of in accordance with the provisions of this Code.**

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[14] *An Act to Revitalize and Strengthen the Bureau of Customs, Amending for the Purpose Certain Sections of the Tariff and Customs Code of the Philippines, As Amended.*

x x x[15]

It is clear that, under the abovequoted provisions of Section 1301, in relation to Sections 1801 and 1802, when the importer fails to file the entry within the required 30-day period, he shall be deemed to have renounced all his interests and property rights to the importations, and these shall be considered impliedly abandoned in favor of the government

From the wording of the above provisions of Section 1801, as amended by RA 7651, it was held in *Chevron* that the law "no longer requires that there be other acts or omissions where an intent to abandon can be inferred. It is enough that the importer fails to file the required import entries within the reglementary period. The lawmakers could have easily retained the words used in the old law (with respect to the intention to abandon) but opted to omit them. It would be error on our part to continue applying the old law despite the clear changes introduced by the amendment."[16]

From these pronouncements, it is clear that abandonment sets in once an importer fails to file the required import entry within the 30-day period provided by law after due notice of the arrival of its shipment (except in cases of knowledgeable owners or importers), without regard to any other act which may or may not have been committed by such importer with respect to the entry of and payment of duties of the imported articles.

The necessary consequence of such abandonment is the transfer of ownership of the imported articles in favor of the government. Thus, as quoted above, Section 1802 of the TCCP provides as follows:

> Section 1802. Abandonment of Imported Articles. **An abandoned article shall *ipso facto* be deemed the property of the Government** and shall be disposed of in accordance with the provisions of this Code.[17]

Chevron ruled that, "[n]o doubt, by using the term *ipso facto* in Section 1802 as amended by RA 7651, **the legislature removed the need for abandonment proceedings and for a declaration that the imported articles have been abandoned before ownership thereof can be transferred to the government**."[18]

It was also held in the same case that "[p]etitioner's failure to file the required entries within a non-extendible period of thirty days from date of

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15 Emphases ours.
16 *Supra* note 9, at 727.
17 Emphasis ours.
18 *Supra* note 9, at 735. (Emphasis ours)

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, *ipso facto,* (that is, they became) the property of the government."[19]

The term *ipso facto* is defined as by the very act itself or by mere act. Probably a closer translation of the Latin term would be by the fact itself. **Thus, there was no need for any affirmative act on the part of the government with respect to the abandoned imported articles since the law itself provides that the abandoned articles shall *ipso facto* be deemed the property of the government.** Ownership over the abandoned importation was transferred to the government by operation of law under Section 1802 of the TCC[P], as amended by RA 7651. **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 [its] imported crude oil.**[20]

It becomes apparent from the above discussions, that the issue of whether or not an importer is guilty of fraud in the filing of its import entry is immaterial insofar as its liability for the payment of the dutiable value of its abandoned importation is concerned. As applied to the present case, petitioner becomes liable to pay the dutiable value of its importation, regardless of whether or not it is guilty of fraud, especially since it consumed or used its imported crude oil despite losing ownership thereof. Thus, the CTA Former *En Banc* correctly held that:

> As regards the issue on the existence of fraud, it should be emphasized that fraud is not controlling in this case. Even in the absence of fraud, petitioner Shell is still liable for the payment of the dutiable value by operation of law. The liability of petitioner Shell for the payment of the dutiable value of its imported crude oil arose from the moment it appropriated for itself the said importation, which were already a property of the government by operation of law. Absence of fraud in this case would not exclude petitioner Shell from the coverage of Sections 1810 and 1802 of the TCCP.[21]

The *ponencia* sustains petitioner's contention and rules that the provisions of Sections 1301, 1801 and 1802 of the TCCP should be read in relation to Section 1603 to make the whole statute wholly operative and effective. I agree that a statute must be read or construed as a whole or in its entirety and that all parts, provisions, or sections, must be read, considered or construed together, and each must be considered with respect to all others,

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19 *Id.* at 736-737.
20 *Id.* at 733.
21 *Rollo*, pp. 152-153.

and in harmony with the whole.[22] However, it would be error to rely on petitioner's fallacious premise that, under Section 1603 of the TCCP, the government's right to claim abandonment and recover the dutiable value of the abandoned importation is dependent on whether or not it (petitioner) is guilty of fraud, and its subsequent position that, if it is not guilty of fraud, the government's right to claim abandonment will lapse after a period of one (1) year. How can the government's right to claim abandonment lapse if the government's ownership over the abandoned articles is already transferred to it by operation of law from the moment that petitioner failed to file its import entry within the non-extendible 30-day period? In other words, after the expiration of the 30-day period, the government, *ipso facto*, becomes the owner of the abandoned articles and, **being the owner, the government's exercise of its rights of ownership over the abandoned imported article, which includes the right to recover the value of such abandoned article, which was already consumed by the importer, is not conditioned upon any prior act or proceeding nor is it subject to the prescriptive period provided under Section 1603.**

Contrary to what has been stated in the *ponencia*, the government, in the present case, is not exercising its power to assess and collect taxes. What it exercises is its right of ownership over abandoned imported articles.

Petitioner's strained and stretched interpretation of Section 1603, as maintained by the *ponencia*, to the effect that it would preclude the government from exercising its right of ownership over the abandoned imported articles, would, in effect, render the provisions of Section 1801 and 1802 nugatory. A careful reading of the provisions of Sections 1801 and 1802, as well as the Congressional deliberations on policy considerations[23] for the non-extendible 30-day period for the filing of the import entry in Section 1301, do not make any mention of nor reference to the provisions of Section 1603 as an exception to the application of the provisions of Sections 1801 and 1802. Particularly, the law does not make the absence of fraud on the part of the importer, nor questions or issues regarding the propriety of the importer's entry and settlement of duties, as factors which would prevent the government from subsequently considering the imported article as abandoned and of recovering its value in case the said article is consumed by the importer despite losing ownership thereof.

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22 *Atty. Valera v. Office of the Ombudsman, et al.*, 570 Phil. 368, 390 (2008).

23 As discussed in the *ponencia*, the following are the policy considerations in imposing the 30-day non-extendible period within which import entries must be filed: (a) to prevent considerable delay in the payment of duties and taxes; (b) **to compel importers to file import entries and claim their importation as early as possible under the threat of having their importation declared as abandoned and forfeited in favor of the government**; (c) to minimize the opportunity of graft; (d) to compel both the BOC and the importers to work for the early release of cargo, thus decongesting all ports of entry; (e) to facilitate the release of goods and thereby promoting trade and commerce; and (f) to minimize the pilferage of imported cargo at the ports of entry. (Emphasis ours)

If the Court were to follow petitioner's interpretation, it would, in effect, impose an additional condition on the government's right to exercise its ownership over the abandoned imported article, a condition which is not provided by law.

Also, insofar as petitioner's liability for the payment of the dutiable value of its imported crude oil is concerned, the provisions of Section 1603 of the TCCP are not applicable. Aside from the reasons discussed above, it is observed that Section 1603 falls under Part V, Title IV of the TCCP which is entitled "Liquidation of Duties." A cursory reading of the related Sections (1601, 1602 and 1604), which fall under this heading, would show that what becomes final and conclusive after the expiration of one (1) year from the final payment of duties is only the determination of the total amount and settlement as well as adjustment of duties, taxes, surcharges, wharfage, and/or other charges to be paid on entries. Nothing in the provisions under this heading excuses an importer from its liability to pay the dutiable value of the importation it consumed despite having abandoned the same in the eyes of the law.

Moreover, as discussed above, it would be grossly disadvantageous to the government if the Court were to follow petitioner's interpretation that, in the absence of fraud and after the lapse of one (1) year from the date of its payment of duties, the government is already precluded from recovering the dutiable value of the subject imported crude oil which the government already owns by operation of law but which was, nonetheless, appropriated and consumed by petitioner.

To recapitulate, the ruling in *Chevron* is clear and simple. There, it was held that the petitioner's failure to file the required entries within a non-extendible period of thirty (30) days from date of discharge of the last package from the carrying vessel constituted implied abandonment of its oil importations, which means that from the precise moment that the non-extendible thirty-day period lapsed, the abandoned shipments became the property of the government. As a consequence, when the petitioner withdrew the oil shipments for consumption, it appropriated for itself properties which already belonged to the government and, thus, became liable for the total dutiable value of the shipments of imported crude oil, without regard to whether or not the importer was guilty of fraud in filing its import entries and in the settlement of its duties pertaining to such importation.

In addition, it is not amiss to point out that in *Chevron*, the Court ruled that the importer's liability to pay the total dutiable value of its shipments of imported crude oil should be reduced by the total amount of duties it had paid thereon. I submit that the same rule should be applied in the present case.

Finally, it is my opinion that this case should have been referred to the Court *en banc* as the ruling in this case runs contrary to the principle established in *Chevron*.

Accordingly, I vote to **DENY** the petition and **AFFIRM** the Decision dated May 13, 2010 and Resolution dated February 22, 2011 of the CTA Former *En Banc* in C.T.A. EB No. 472, subject to the modification that petitioner should be made to pay the total dutiable value of its shipment of imported crude oil reduced by the total amount of duties it had already paid to the government for such importation.

DIOSDADO M. PERALTA
Associate Justice

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