Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

THE COMMISSIONER OF CUSTOMS & THE DISTRICT COLLECTOR OF CUSTOMS FOR THE PORT OF ILOILO, Petitioners,	G.R. No. 163055
	Present:
- versus -	CARPIO, *J.*, Chairperson, BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
NEW FRONTIER SUGAR CORPORATION, Respondent.	Promulgated: JUN 11 2014

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DECISION

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 29 March 2004 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 48842 which affirmed the Decision and Resolution dated 19 June 1998 and 23 July 1998, respectively, of the Court of Tax Appeals (CTA)[2] in C.T.A. Case No. 5347.

The Facts

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1 *Rollo*, pp. 27-35; Penned by Associate Justice Elvi John S. Asuncion with Associate Justices Godardo A. Jacinto and Lucas P. Bersamin (now a member of this Court) concurring.

2 Id. at 118-143; Chaired by Presiding Judge Ernesto D. Acosta with Associate Judges Ramon O. De Veyra and Amancio Q. Saga as members.

As both found by the trial court and appellate court, the factual antecedents[3] of the case are as follows:

Petitioners are the duly appointed Commissioner of Customs, and the District Collector of Customs for the Port of Iloilo. Respondent, on the other hand, is a domestic corporation with office address at the 9th floor of Rufino Center Bldg., 6784 Ayala Avenue, Makati City. It is duly registered with the Board of Investments on a non-pioneer status and has been granted incentives to modernize and rehabilitate its sugar mill under Certificate of Registration No. 93-452 dated 28 January 1994.

On 25 September 1995, a contract of sale covering 15,000 metric tons of Thailand raw sugar was entered into by and between Ms. Margarita Chua Sia, buyer and President of respondent, and Osumo Nishihara of Maruha Corporation, a Japan based trading company, for and in behalf of the seller, Taiyo (U.K.) Limited.

On 3 October 1995, respondent applied with the United Coconut Planters Bank for a letter of credit for the above transaction and was issued L/C No. 95-61574-7 on 5 October 1995 after the payment of the advance import duty of ₱64,315,388.00.

In the meantime, said shipment of raw cane sugar arrived at the Port of Iloilo on 4 October 1995 on board the vessel M/V ALTAIR SS, Voyage No. 60, under Bill of Lading No. 1. Upon request of the respondent, the shipment was allowed by petitioner District Collector (Collector) to be discharged and transferred to its bodega at Calinog, Iloilo under certain conditions.[4]

On 6 December 1995, Director Ray M. Allas of the Customs and Intelligence & Investigation Service (CIIS) issued Alert Order No. ACI/120695/09 on the subject shipment declaring that it violated *Joint Order No. 1-91* for lack of Clean Report of Findings (CRF). Thus, a Warrant of Seizure and Detention (WSD) against the shipment was recommended for violation of said *Joint Order*, in relation to Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP).[5]

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3 Id. at 119-125; CTA Decision dated 19 June 1998. Id. at 28-30; CA Decision dated 29 March 2004.

4 Id. at 119-120.

5 Id. at 28; CA Decision dated 29 March 2004.

On 22 December 1995, respondent wrote the petitioner Collector explaining that its lack of CRF should not be construed as intentional there being good faith on its part in complying with the requirements for the issuance of the Import Advice Note (IAN). Further, respondent explained that Taiyo (U.K.) Limited was aware of the *Societe Generale de Surveillance* (SGS) pre-shipment inspection requirements and instructed its agent in Thailand to allow an authorized third party, United Asia Supplier Co. Ltd. (United Asia), to inspect the samples of sugar. Respondent likewise clarified that they were not advised by the seller that the sugar ordered was initially shipped-out to China and that the Thailand agent failed to advise it of the SGS pre-shipment inspection under the impression that the previous inspection and testing made by United Asia would suffice.[6]

In view thereof, respondent requested for the tentative release of the shipment on the ground that the SGS pre-shipment inspection was not undertaken due to miscommunication and it was without intention to circumvent the Comprehensive Import Supervision Scheme (CISS). Petitioner Collector approved such request and the shipment was thereafter tentatively released. The CIIS however opposed the tentative release insisting that respondent was not able to prove that its failure to obtain a CRF was unintentional. Petitioner Commissioner of Customs (Commissioner) then directed the petitioner Collector to resolve the opposition of the CIIS. It was found out that the failure to secure CRF was due to the fault of the shipper and it was unintentional on the part of respondent; hence, there was no need to issue a WSD.[7]

Upon respondent's issuance and submission of a post-dated guarantee/security check in the amount of ₱234,998,950.90, petitioner Collector recommended to the petitioner Commissioner that the imposition of penalty be dispensed with unless the SGS will not issue the required CRF. Petitioner Commissioner then created a three-man hearing body to resolve the issue on whether the lack of CRF was intentional or not, as ordered in Customs Special Order No. D-03-96 dated 16 January 1996.[8]

Pending said hearing, SGS-Manila Liaison Office issued on 18 January 1996 CRF No. THL017904 covering the subject shipment. Eventually, the three-man hearing body issued a Resolution dated 15 February 1996, the dispositive portion of which is quoted hereunder as follows:

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6 Id.
7 Id. at 29.
8 Id.

> WHEREFORE, in view of the foregoing and subject to the approval of the Commissioner of Customs, the District Collector of Customs, Port of Iloilo, is hereby ordered to initiate a seizure proceeding against the security/guarantee put up by NSFC (respondent herein) to secure the tentative release of the subject shipment for the imposition of appropriate penalty pursuant to CAO No. 4-94 and the collection of proper duties, taxes, penalties and other charges.[9]

Afterwards, the aforesaid Resolution was approved by the petitioner Commissioner with the following handwritten modifications:

> 1. First demand for payment of penalty as instructed in the Commissioner's Memorandum dated 17 January 1996, i.e. "payment of 20% penalty of the landed cost for failure to undergo the pre-shipment inspection at the Port of exportation"; and
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> 2. Upon failure by the importer to pay the penalty within (10) days from receipt of demand, proceed against the security/guarantee by initiating a seizure proceeding against the same and deposit immediately the guarantee in accordance with law in order to protect the interest of the government.[10]

Respondent filed a Motion for Reconsideration of the said Resolution but the same was denied on 27 March 1996. Then, on 29 March 1996, petitioner Collector sent a demand letter to respondent for the payment of the twenty percent (20%) penalty within ten (10) days from its receipt, which the latter actually received on 3 April 1996. However, without waiting for the lapse of the ten-day grace period, the Bureau of Customs of the Port of Iloilo immediately deposited the security check on 2 April 1996, prompting respondent to order for a stop payment of said check.[11]

Consequently, petitioner Collector demanded from respondent the payment of penalty indicated in the subject Resolution amounting to ₱41,858,550.00. Likewise, the subsequent shipment of 9,948,615 metric tons of raw sugar by respondent was withheld by petitioner Collector for the purpose of being sold at public auction to cover for the 20% penalty.[12]

Thereafter, on 10 April 1996, respondent filed a Petition for Review with prayer for the issuance of a Writ of Preliminary Injunction and/or

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9 Id.
10 Id. at 118; CTA Decision dated 19 June 1998.
11 Id. at 30; CA Decision dated 29 March 2004.
12 Id.

Temporary Restraining Order (TRO) before the CTA, docketed as C.T.A. Case No. 5347.[13]

The Ruling of the CTA

In a Decision dated 19 June 1998,[14] the CTA granted respondent's Petition and accordingly reversed and set aside the Decision of the petitioner Commissioner to impose a 20% penalty on respondent's subject shipment, the dispositive portion of which reads:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, the decision to impose a 20% penalty on [respondent] subject shipment of raw sugar is hereby **REVERSED** and **SET ASIDE**. The GSIS Surety Bond with No. G [16] GIF 027358 posted by the [respondent] before this Court in the amount of P83,717,100.00 is hereby **CANCELLED** and **RELEASED** of its undertaking.[15]

The CTA based its ruling on the following factual and legal findings: (1) that since there was no valid seizure proceeding ever conducted by petitioners against respondent's case, it therefore failed to comply with Section 2301 of the TCCP, as amended, which requires the Collector to issue a WSD upon making any seizure, and also with Section 2303 of the same, which provides the need of a prior written notice of seizure and opportunity to be heard on the part of the owner or importer in reference to the alleged delinquency, a clear violation of respondent's constitutional right to procedural due process;[16] (2) that since there was no valid seizure as adverted to above, the imposition of the 20% penalty under Customs Administrative Order (CAO) No. 4-94 is outright improper and without any legal basis; (3) that the subsequent issuance of the CRF over respondent's shipment under the provisions of Customs Memorandum Order (CMO) No. 9-95 satisfied the inspection and the CRF required under paragraph 12 of *Joint Order No. 1-91* considering that it cleared the said shipment from automatic seizure. Nonetheless, even if the subject shipment of respondent may have been subjected to an alleged automatic seizure, the eventual issuance of the CRF covering the same shipment cured all deficiencies;[17] (4) that respondent's act of issuing a "STOP PAYMENT" order was justified considering petitioners' act of depositing the post-dated guarantee/security

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13 Id. at 126; CTA Decision dated 19 June 1998.

14 Id. at 118-142; Penned by Associate Judge Ramon O. De Veyra with Presiding Judge Ernesto D. Acosta and Associate Judge Amancio Q. Saga concurring.

15 Id. at 141.

16 Id. at 132-134.

17 Id. at 136-139.

check being improper and without any legal basis;[18] and (5) that petitioner Collector acted beyond his mandate under Section 1508 of the TCCP when he withheld respondent's subsequent shipment of raw sugar considering that there was still no outstanding and demandable amount (penalty of fine) to be paid. The fine which is the subject matter of the instant case was precisely the one being questioned by respondent; hence, its liability has yet to be determined.[19]

Subsequently, on 23 July 1998, the CTA denied petitioners' Motion for Reconsideration for failure to raise any new matter which has yet to be considered and passed upon in its assailed 19 June 1998 Decision.[20]

Aggrieved, and following the rules on court hierarchy then prevailing, petitioners appealed to the CA by filing a Petition for Review pursuant to Rule 43 of the 1997 Rules of Civil Procedure, docketed as CA-G.R. SP No. 48842.

The Ruling of the CA

The CA affirmed[21] both the aforesaid Decision and Resolution rendered by the CTA in C.T.A. Case No. 5347, pronouncing that seizure of goods starts with the issuance of a WSD, being a part of the procedural due process, to which respondent is entitled to. Without it, respondent will then be deprived of its right to avail of the tentative release of the shipment which is expressly allowed under the conditions set forth in CMO No. 9-95.

In addition, the appellate court ruled that respondent cannot be faulted in ordering the stop payment of its guarantee/security check because it was deposited by petitioners on 2 March 1996, or exactly six (6) days ahead of respondent's deadline to pay the alleged 20% penalty. It failed to consider that before the lapse of the given period, the Bureau of Customs had no right to hold the value of the check against respondent. More so, since there was already the subsequent issuance of the CRF on 18 January 1996 by the SGS Manila Liaison, respondent in effect could not have violated any customs laws which would render it liable to pay for the 20% penalty.

Lastly, while it may be argued that the CRF is required to be issued before the shipment of the goods, the late issuance of the same to respondent

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18 Id. at 139-140.
19 Id. at 140-141.
20 Id. at 143; CTA Resolution dated 23 July 1998.
21 Id. at 27-35.

amounts to substantial compliance with the provisions of *Joint Order No. 1-91*. The purpose for which the CRF is required has already been served since the imported goods were already inspected by the SGS. The CA therefore concluded that if the belated issued CRF will be ignored, then it will work against all the procedures conducted to determine the propriety of issuing the late CRF.

Not satisfied, petitioners are now in quest for redemption before this Court, raising that the CA committed serious and reversible error in ruling, that: (a) the issuance of a WSD was necessary; (b) the imposition of the 20% penalty on respondent's shipment was not justified; (c) the later issuance of the CRF over the subject shipment had the effect of full compliance with *Joint Order No. 1-91*; and (d) the deposit of respondent's check by petitioners was improper and without legal basis.

The Issue

The core issue for the Court's consideration is whether or not respondent has violated paragraph 12 of *Joint Order No. 1-91*, in relation to paragraph (f), Section 2530 of the TCCP, as amended, for failure to submit the subject raw cane sugar shipment to pre-shipment inspection and to present the corresponding CRF resulting therefrom. Consequently, if respondent indeed violated said provision, the question of the imposition of the 20% penalty pursuant to CAO No. 4-94, on respondent's subject shipment, then arises.

Our Ruling

We find the petition unmeritorious.

Prefatorily, in accordance with the pertinent customs laws at the time of the arrival of the subject shipment of this case, it must be pointed out that importers, such as respondent herein, are duty-bound to comply with the provisions of the CISS,[22] implemented by *Joint Order No. 1-91*,[23]

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[22] Section 14 of CBP Circular No. 1389, Series of 1993, issued on 13 April 1993, provides:

> SECTION 14. Comprehensive Import Supervision Scheme (CISS). – Goods destined for importation into the Philippines shall be subject to inspection by the inspector(s) duly authorized by the Government in the countries of supply, as to the quality, quantity, price/HCV, verification of Tariff and Customs Code, classification and verification of Tariff rate, under a Comprehensive Import Supervision Scheme (CISS).

particularly as to the requirement of a pre-shipment inspection of the quality, quantity, and price of the imports coming into the Philippines to be conducted at the country of export. Notably, the pre-shipment inspection was intended to prevent the possibility of the undervaluation, misdeclaration, and overvaluation of imports shipped to our country which may defraud the Philippine Government of revenues.[24]

The aforesaid scheme aims to ensure the quality and quantity specifications of consignments, and achieved through advance cargo clearance and supplying the country's Bureau of Customs with accurate information about the quality and specification of bulk and break bulk cargo.[25] In other words, the pre-shipment inspection requirement simply helps the Governments around the world in protecting their import revenues, facilitate trade, and minimize the risk of illegal imports.[26]

Thereafter, upon inspection and determination that the subject shipment is in order, a corresponding CRF shall be issued by the SGS. Only then may the imports be allowed in our country for release, after compliance with other equally significant requirements, such as but not limited to, filing of import entry and payment of duty.

In the case at bench, it is apropos to look into the allegation that, as stated in Alert Order No. A/CI/120695/09, respondent violated *Joint Order No. 1-91*, which implements the CISS, particularly paragraph 12 thereof, to wit:

> Pursuant to Joint Order 1-91 (Appendix 4) which governs the implementation of the CISS, the following commodities are subject to inspection:
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> 1. Goods sold and/or supplied from all countries with FOB value of US$500.00 and above.
> 2. Goods invoiced or declared in the shipping documents as off-quality under such descriptive terms as stocklots, side-runs, call rolls, seconds, mill lots, scraps, off-grade, reconditioned, used, junk or similar terms conveying or purporting to convey the condition of the article as not being brand-new or first quality, regardless of value.

23 This Order was promulgated by the Secretary of Finance, the Secretary of Trade and Industry, and the Governor of the Central Bank of the Philippines for the implementation of the Comprehensive Import Supervision Scheme (CISS).

24 *Bureau Veritas v. Office of the President*, G.R. No. 101678, 3 February 1992, 205 SCRA 705, 708.

25 http://www.sgs.ph/en/Logistics/Transportation/Containers/Pre-Shipment-Inspection-PSI/Pre Shipment-Inspection-Philippines.aspx last visited 26 March 2014.

26 http://www.sgs.ph/En/Public-Sector/Valuation-Services/Pre-Shipment-Inspection-PSI.aspx last visited 26 March 2014.

> 12. No Custom Entry shall be filed or accepted or any shipment released in respect of any goods which require a CRF as provided for by this Joint Order **where the Importer is unable to produce to the Bureau of Customs the authenticated customs copy of the CRF. With or without fault on the part of the importer, such goods shall be subject to automatic seizure by the Bureau of Customs.** The Seller is therefore warned against the shipment of goods which have not been inspected or for which a CRF has not been issued. (Emphasis supplied)

Petitioners argue that the above-quoted provision should be read in relation to paragraph (f), Section 2530 of the TCCP, as amended, quoted hereunder as follows:

> Sec. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. – Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
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> x x x x
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> f. Any article of prohibited importation or exportation, **the importation or exportation of which is effected or attempted contrary to law**, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former. (Emphasis supplied)

Records of the case reveal that, at the time of the arrival of the shipment of respondent's raw cane sugar, it did not have the required CRF. Such lack of CRF was due to failure to undergo the needed pre-shipment inspection from its place of exportation. As a result thereof, pursuant to paragraph 12 of *Joint Order No. 1-91*, read in conjunction with Section 2530(f) of the TCCP, as amended, petitioners assert that respondent's shipment of raw cane sugar "shall be subject to automatic seizure."

The phrase "shall be subject to automatic seizure" is not, however, an unrestrained mandate. It is not a roving commission to dispense with the procedural due process of seizure proceedings. This is the particular provision clearly expressed in Sections 2301 and 2303 of the TCCP, as amended, which say:

> Sec. 2301. Warrant for Detention of Property-Cash Bond. – **Upon making any seizure, the Collector shall issue a warrant for the detention of the property**; and if the owner or importer **desires to secure the release of the property for legitimate use, the Collector shall, with the approval of the Commissioner of Customs, surrender it upon the**

> **filing of a cash bond, in an amount to be fixed by him, conditioned upon the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case:** Provided, That **such importation shall not be released under any bond when there is a prima facie evidence of fraud in the importation of article**: Provided, further, That articles the importation of which is prohibited by law shall not be released under any circumstance whatsoever: Provided, finally, That nothing in this section shall be construed as relieving the owner or importer from any criminal liability which may arise from any violation of law committed in connection with the importation of the article.[27] (Emphasis supplied)
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> Sec. 2303. Notification to Owner or Importer. – The Collector shall give the owner or importer of the property or his agent **a written notice of the seizure and shall give him an opportunity to be heard** in reference to the delinquency which was the occasion of such seizure.
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> x x x x (Emphasis supplied).

Ut magis valeat quam pereat. A statute is to be interpreted as a whole. The provisions of a specific law should be read, considered, and interpreted together as a whole to effectuate the whole purpose of which it was legislated. A section of the law is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together. In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.[28]

Applying the foregoing principles herein, paragraph 12 of *Joint Order No. 1-91* should be read in relation to Sections 2301 and 2303 of the TCCP, as amended, in order to effectuate the purposes of which they were enacted, particularly as to the procedural requirements set forth in conducting seizure proceedings. Thus, in the 19 June 1998 Decision in C.T.A. Case No. 5347, the CTA correctly articulated that a WSD is a condition precedent, before any seizure proceeding can be formally initiated. It therefore emphasized the constitutionally enshrined right to procedural due process of any person, natural or juridical, under investigation especially if it will cause the person his/its life or property. As previously mentioned, the above-quoted sections clearly laid down the mandatory procedures to be observed in a seizure case, to wit: (1) that a WSD must first be issued upon making any seizure; and (2) that a written notice of such seizure must be served upon the owner or

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[27] As amended by Republic Act No. 7651 entitled "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."

[28] *Civil Liberties Union v. Executive Secretary*, G. R. No. 83896, 22 February 1991, 194 SCRA 317, 331.

importer or his agent. Failure to comply with the foregoing procedural requirements would negate the propriety of having the subject shipment of respondent seized and forfeited in favor of the Government in all cases. Hence, even if the phrase "subject to automatic seizure" was used under paragraph 12 of *Joint Order No. 1-91*, the same must be construed together and harmonized with other related provision of law, i.e. Sections 2301 and 2303 of the TCCP, as amended, in order to form a uniform system of jurisprudence on seizure proceedings.

Likewise, it would be improvident not to state at this juncture that the subject shipment could not be deemed liable for seizure or even forfeiture on the ground of violation of Section 2530(f) of the TCCP, as amended, for it must be proven first that fraud has been committed by or there was bad faith on the part of the importer/consignee to evade payment of the duties due and demandable.

Time and again, and consistently, this Court has ruled that the *onus probandi* to establish the existence of fraud is lodged with the Bureau of Customs which ordered the forfeiture of the imported goods. Fraud is never presumed. It must be proved. Failure of proof of fraud is a bar to forfeiture. The reason is that forfeitures are not favored in law and equity.[29] The fraud contemplated by law must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right.[30] Absent fraud, the Bureau of Customs cannot forfeit the shipment in its favor.

Significantly, based on the records of the present case, it was determined during the administrative proceedings before the petitioner Collector, that there was no intentional circumvention of the said CISS requirement on the part of respondent because the failure to subject the shipment to SGS pre-shipment inspection was purely attributable to the fault of the shipper; hence, respondent acted in good faith. In other words, since there was no deliberate circumvention of the CISS, the same therefore cannot be recommended for seizure and/or forfeiture. As a matter of fact, pursuant to CMO No. 9-95, it was no other than the petitioner Collector who recommended and thereafter allowed that the subject shipment be tentatively released, and that the imposition of the penalty against it be dispensed with unless the SGS will not issue the required CRF.[31] These factual

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29 *Rep. of the Phils. v. Ker and Co.*, 124 Phil. 822, 831 (1966); *Yu Phi Khim v. Amparo*, 86 Phil. 441, 446 (1950); and *Farm Implement and Machinery Co. v. Commissioner of Customs*, 133 Phil. 836, 848 (1968).

30 *Farolan v. Court of Tax Appeals*, G.R. No. 42204, 21 January 1993, 217 SCRA 298, 304.

31 CTA exhibits folder; Memorandum dated 15 January 1996, Exhibit "AQ" to "AQ-2," inclusive.

circumstances further strengthened the position taken by respondent that it had indeed sufficiently proven its claim of good faith on the non-production of CRF, which likewise established lack of fraudulent intent to evade payment of duties on its part. Clearly, petitioners' failure to comply with the procedural requirements set forth under the applicable provisions of the TCCP, as amended, in pursuing for the seizure of the subject shipment under paragraph 12 of *Joint Order No. 1-91*, was fatal to their cause.

Now this Court proceeds to determine whether or not the imposition of the 20% penalty on respondent's subject shipment is justified under the present factual and legal circumstances of this case.

The aforesaid 20% penalty being collected by petitioners against respondent was based on the imposition under CAO No. 4-94,[32] particularly Part II (C)(C.1) thereof, which reads:

> SUBJECT: Schedule of fines to be imposed in the **settlement of seizure cases pending hearing pursuant to Section 2307 of the Tariff and Customs Code, as amended by Executive Order No. 38.**
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> x x x x
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> II. SCHEDULE OF FINES
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> In the **settlement of seizure cases pending hearing**, where settlement thereof is allowed under the existing laws and regulations, the following schedule of fines for the corresponding violations are hereby provided:
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> x x x x
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> C. ONLY VIOLATION IS **LACK OF SGS CLEAN REPORT OF FINDINGS (CRF)**
>
> C.1 First Violation - 20%
>
> x x x x (Emphasis supplied)

Relevant thereto, Section 2307 of the TCCP, as amended, provides:

> Sec. 2307. Settlement of Case by Payment of Fine of Redemption of Forfeited Property. – Subject to approval of the Commissioner, the

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[32] Subject: Schedule of fines to be imposed in the settlement of seizure cases pending hearing pursuant to Section 2307 of the Tariff and Customs Code, as amended by Executive Order No. 38.

> district collector may **while the case is still pending**, except when there is fraud, **accept the settlement of any seizure case provided that the owner, importer, exporter, or consignee or his agent shall offer to pay to the collector a fine imposed by him upon the property,** or in case of forfeiture, the owner, exporter, importer or consignee or his agent shall offer to pay for the domestic market value of the seized article. The Commissioner may accept the settlement of any seizure case on appeal in the same manner.
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> x x x x (Emphasis supplied)

Clearly from the foregoing, the law presupposes a pending seizure proceeding legally initiated against the shipment intended to be seized in accordance with the pertinent provisions of the TCCP, as amended. Absence of such pending proceeding against respondent's shipment renders CAO No. 4-94 and Section 2307 inapplicable in the present case. Consequently, there would be no legal basis to hold the subject shipment liable for the aforesaid 20% penalty on the sole ground of lack of CRF.

Accordingly, this Court hereby adopts the factual and legal findings of the CTA in its 19 June 1998 Decision,[33] pertinent portions of which are quoted hereunder as follows:

> It is to be readily observed that the aforequoted subject of said CAO pertains to fines imposed on seizure cases. Inasmuch as the instant case has not been put under a valid seizure as adverted to above, the imposition of the 20% penalty under CAO 4-94 is outright improper and without legal basis. The problem with [petitioners] is that in its desire to give more teeth to the administrative requirement for the production of a Clean Report of Findings (CRF) from the SGS, it overlooked one fundamental principle in law – that no fine, surcharge, forfeiture or any penalty may be imposed except in pursuance of a provision of law. In the instant case, the closest provision [petitioners] could cite is [S]ection 2307 of the Tariff and Customs Code as implemented by CAO 4-94, without realizing that the same pertains only to seizure cases. Under the provisions imposing fine found in Sections 2505 to 2529 of the same Code, not one pertains to non-production of CRF. The Secretary of Finance, Secretary of Trade and Industry and the Governor of the Central Bank in issuing the Joint Order No. 1-91, which serves as the basis of the requirement for the production of a CRF, did not provide for the imposition of fine or other penalties maybe because they realize that the imposition of penalties is a legislative prerogative.
>
> The non-production of CRF by itself does not give rise to any penalty but may serve as a basis to hold and to investigate the particular shipment which may lead to findings of undervaluation, misdeclaration or

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33 *Rollo*, pp. 118-142.

> misclassification for which the law provides the corresponding penalty such as surcharge, fine or forfeiture under Sections 2503, 2530-2536 of the TCC[P]. These offenses were not shown in the records of the case. On the contrary, there was this finding by the [petitioners] that the non-production of the CRF was not intentional. The mistake or error was found to be committed by the supplier without prior knowledge on the part of the [respondent]. In fact, a CRF was later on produced and the discrepancy was not enough to constitute undervaluation under Sections (sic) 2503 of the said Code. The [respondent] was only required by the [petitioners] to pay additional duties and taxes corresponding to the difference of 4.79% in valuation.[34]

Lastly, granting *arguendo* that this Court considers applying the provisions of CAO No. 4-94 in the present case, we find that substantial compliance by respondent in the provisions of CMO No. 9-95 has rendered the issue on the imposition of the 20% penalty for lack of CRF moot.

CMO No. 9-95 categorically provides the revised procedures on the tentative release of shipments lacking the required CRF. Its objectives are as follows: (1) to avoid delays in the processing and releasing of shipments arising from the lack of SGS-CRF in relation to *Joint Order No. 1-91*, as amended; (2) to further facilitate trade and provide adequate security to government revenue; and (3) to enable the prompt collection of revenue due the government.[35] Simply put, the aforesaid Order provides a remedy for importers or consignees who have failed to undergo their shipments to pre-shipment inspections under the CISS which arrived in the country and entered in a customs house without the requisite CRF. More importantly, Part V(1), Step 5 of CMO No. 9-95 clearly states that the processing of the SGS-CRF by the SGS affiliate in the country of exportation shall be deemed "as if inspection has taken place" and that the issuance of the SGS-CRF shall be done by SGS-Manila Liaison Office.

Verily, it was proper for the CTA and CA to rule that the subsequent issuance of the CRF over respondent's subject shipment pursuant to the provisions of CMO No. 9-95 substantially complied and satisfied the mandatory inspection and corresponding CRF required under paragraph 12 of *Joint Order No, 1-91*. Therefore, the subsequent issuance of the CRF on 18 January 1996 cleared the shipment from the alleged automatic seizure and 20% penalty imposable under CAO No. 4-94. The eventual issuance of the required CRF covering respondent's shipment had indeed cured all deficiencies; thus, leaving petitioners no right whatsoever in demanding for

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34 Id. at 134-136.

35 Id. at 199; Part I, CMO No. 9-95.

the value of the guarantee/security check previously issued by respondent for the sole purpose it was made.

Parenthetically, this Court finds no abusive or improvident exercise of authority on the part of the CTA. Since there is no showing of gross error or abuse on the part of the CTA, and its findings are supported by substantial evidence which were thoroughly considered during the trial, there is no cogent reason to disturb its findings and conclusions – and they carry even more weight when the CA affirms its factual and legal findings.

WHEREFORE, the petition is hereby **DENIED** for lack of merit. No costs.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice