Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF CUSTOMS, Petitioner,	**G.R. No. 161759**
	Present:
- *versus* -	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
OILINK INTERNATIONAL CORPORATION, Respondent.	Promulgated: JUL 0 2 2014

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DECISION

BERSAMIN, *J.*:

This appeal is brought by the Commissioner of Customs to seek the review and reversal of the decision promulgated on September 29, 2003,[1] whereby the Court of Appeals (CA) affirmed the adverse ruling of the Court of Tax Appeals (CTA) declaring the assessment for deficiency taxes and duties against Oilink International Corporation (Oilink) null and void.

Antecedents

The antecedents are summarized in the assailed decision.[2]

On September 15, 1966, Union Refinery Corporation (URC) was established under the *Corporation Code of the Philippines*. In the course of its business undertakings, particularly in the period from 1991 to 1994, URC imported oil products into the country.

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[1] *Rollo*, pp. 56-66; penned by Associate Justice Amelita G. Tolentino, with Associate Justice Eloy R. Bello, Jr. (retired) and Associate Justice Arturo D. Brion (now a Member of the Court) concurring.

[2] Id. at 57-60.

On January 11, 1996, Oilink was incorporated for the primary purpose of manufacturing, importing, exporting, buying, selling or dealing in oil and gas, and their refinements and by-products at wholesale and retail of petroleum. URC and Oilink had interlocking directors when Oilink started its business.

In applying for and in expediting the transfer of the operator's name for the Customs Bonded Warehouse then operated by URC, Esther Magleo, the Vice-President and General Manager of URC, sent a letter dated January 15, 1996 to manifest that URC and Oilink had the same Board of Directors and that Oilink was 100% owned by URC.

On March 4, 1998, Oscar Brillo, the District Collector of the Port of Manila, formally demanded that URC pay the taxes and duties on its oil imports that had arrived between January 6, 1991 and November 7, 1995 at the Port of Lucanin in Mariveles, Bataan.

On April 16, 1998, Brillo made another demand letter to URC for the payment of the reduced sum of ₱289,287,486.60 for the Value-Added Taxes (VAT), special duties and excise taxes for the years 1991-1995.

On April 23, 1998, URC, through its counsel, responded to the demands by seeking the landed computations of the assessments, and challenged the inconsistencies of the demands.

On November 25, 1998, then Customs Commissioner Pedro C. Mendoza formally directed that URC pay the amount of ₱119,223,541.71 representing URC's special duties, VAT, and Excise Taxes that it had failed to pay at the time of the release of its 17 oil shipments that had arrived in the Sub-port of Mariveles from January 1, 1991 to September 7, 1995.

On December 21, 1998, Commissioner Mendoza wrote again to require URC to pay deficiency taxes but in the reduced sum of ₱99,216,580.10.

On December 23, 1998, upon his assumption of office, Customs Commissioner Nelson Tan transmitted another demand letter to URC affirming the assessment of ₱99,216,580.10 by Commissioner Mendoza.

On January 18, 1999, Magleo, in behalf of URC, replied by letter to Commissioner Tan's affirmance by denying liability, insisting instead that only ₱28,933,079.20 should be paid by way of compromise.

On March 26, 1999, Commissioner Tan responded by rejecting Magleo's proposal, and directed URC to pay ₱99,216,580.10.

On May 24, 1999, Manuel Co, URC's President, conveyed to Commissioner Tan URC's willingness to pay only ₱94,216,580.10, of which the initial amount of ₱28,264,974.00 would be taken from the collectibles of Oilink from the National Power Corporation, and the balance to be paid in monthly installments over a period of three years to be secured with corresponding post-dated checks and its future available tax credits.

On July 2, 1999, Commissioner Tan made a final demand for the total liability of ₱138,060,200.49 upon URC and Oilink.

On July 8, 1999, Co requested from Commissioner Tan a complete finding of the facts and law in support of the assessment made in the latter's July 2, 1999 final demand.

Also on July 8, 1999, Oilink formally protested the assessment on the ground that it was not the party liable for the assessed deficiency taxes.

On July 12, 1999, after receiving the July 8, 1999 letter from Co, Commissioner Tan communicated in writing the detailed computation of the tax liability, stressing that the Bureau of Customs (BoC) would not issue any clearance to Oilink unless the amount of ₱138,060,200.49 demanded as Oilink's tax liability be first paid, and a performance bond be posted by URC/Oilink to secure the payment of any adjustments that would result from the BIR's review of the liabilities for VAT, excise tax, special duties, penalties, *etc*.

Thus, on July 30, 1999, Oilink appealed to the CTA, seeking the nullification of the assessment for having been issued without authority and with grave abuse of discretion tantamount to lack of jurisdiction because the Government was thereby shifting the imposition from URC to Oilink.

Decision of the CTA

On July 9, 2001, the CTA rendered its decision declaring as null and void the assessment of the Commissioner of Customs, to wit:

> **IN THE LIGHT OF ALL THE FOREGOING**, the petition is hereby GRANTED. The assailed assessment issued by Respondent against

> herein Petitioner OILINK INTERNATIONAL CORPORATION is hereby declared **NULL and VOID**.
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> SO ORDERED.[3]

The Commissioner of Customs seasonably filed a motion for reconsideration,[4] but the CTA denied the motion for lack of merit.[5]

Judgment of the CA

Aggrieved, the Commissioner of Customs brought a petition for review in the CA upon the following issues, namely: (a) the CTA gravely erred in holding that it had jurisdiction over the subject matter; (b) the CTA gravely erred in holding that Oilink had a cause of action; and (c) the CTA gravely erred in holding that the Commissioner of Customs could not pierce the veil of corporate fiction.

On the issue of the jurisdiction of the CTA, the CA held:

> x x x the case at bar is very much within the purview of the jurisdiction of the Court of Tax Appeals since it is undisputed that what is involved herein is the respondent's liability for payment of money to the Government as evidenced by the demand letters sent by the petitioner. Hence, the Court of Tax Appeals did not err in taking cognizance of the petition for review filed by the respondent.
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> x x x x
>
> We find the petitioner's submission untenable. The principle of non-exhaustion of administrative remedy is not an iron-clad rule for there are instances that immediate resort to judicial action may be proper. Verily, a cursory examination of the factual milieu of the instant case indeed reveals that exhaustion of administrative remedy would be unavailing because it was the Commissioner of Customs himself who was demanding from the respondent payment of tax liability. In addition, it may be recalled that a crucial issue in the petition for review filed by the respondent before the CTA is whether or not the doctrine of piercing the veil of corporate fiction validly applies. Indubitably, this is purely a question of law where judicial recourse may certainly be resorted to.[6]

As to whether or not the Commissioner of Customs could lawfully pierce the veil of corporate fiction in order to treat Oilink as the mere alter ego of URC, the CA concurred with the CTA, quoting the latter's following findings:

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[3] Id. at 161.
[4] Id. at 162-184.
[5] Id. at 187-188.
[6] Id. at 63.

> In the case at bar, the said wrongdoing was not clearly and convincingly established by Respondent. He did not submit any evidence to support his allegations but merely submitted the case for decision based on the pleadings and evidence presented by petitioner. Stated otherwise, should the Respondent sufficiently prove that OILINK was merely set up in order to avoid the payment of taxes or for some other purpose which will defeat public convenience, justify wrong, protect fraud or defend crime, this Court will not hesitate to pierce the veil of corporate fiction by URC and OILINK.[7]

Issues

Hence, this appeal, whereby the Commissioner of Customs reiterates the issues raised in the CA.

Ruling of the Court

We affirm the judgment of the CA.

1.
The CTA had jurisdiction over the controversy

There is no question that the CTA had the jurisdiction over the case. Republic Act No. 1125, the law creating the CTA, defined the appellate jurisdiction of the CTA as follows:

> Section 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> x x x x
>
> 2. Decisions of the Commissioner of Customs in cases involving liability for Customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs;
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> x x x x

Nonetheless, the Commissioner of Customs contends that the CTA should not take cognizance of the case because of the lapse of the 30-day period within which to appeal, arguing that on November 25, 1998 URC had

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[7] Id. at 65.

already received the BoC's final assessment demanding payment of the amount due within 10 days, but filed the petition only on July 30, 1999.[8]

We rule against the Commissioner of Customs. The CTA correctly ruled that the reckoning date for Oilink's appeal was July 12, 1999, not July 2, 1999, because it was on the former date that the Commissioner of Customs denied the protest of Oilink. Clearly, the filing of the petition on July 30, 1999 by Oilink was well within its reglementary period to appeal. The insistence by the Commissioner of Customs on reckoning the reglementary period to appeal from November 25, 1998, the date when URC received the final demand letter, is unwarranted. We note that the November 25, 1998 final demand letter of the BoC was addressed to URC, not to Oilink. As such, the final demand sent to URC did not bind Oilink unless the separate identities of the corporations were disregarded in order to consider them as one.

2.
Oilink had a valid cause of action

The Commissioner of Customs posits that the final demand letter dated July 2, 1999 from which Oilink appealed was not the final "action" or "ruling" from which an appeal could be taken as contemplated by Section 2402 of the Tariff and Customs Code; that what Section 7 of RA No. 1125 referred to as a decision that was appealable to the CTA was a judgment or order of the Commissioner of Customs that was final in nature, not merely an interlocutory one; that Oilink did not exhaust its administrative remedies under Section 2308 of the Tariff and Customs Code by paying the assessment under protest; that only when the ensuing decision of the Collector and then the adverse decision of the Commissioner of Customs would it be proper for Oilink to seek judicial relief from the CTA; and that, accordingly, the CTA should have dismissed the petition for lack of cause of action.

The position of the Commissioner of Customs lacks merit.

The CA correctly held that the principle of non-exhaustion of administrative remedies was not an iron-clad rule because there were instances in which the immediate resort to judicial action was proper. This was one such exceptional instance when the principle did not apply. As the records indicate, the Commissioner of Customs already decided to deny the protest by Oilink on July 12, 1999, and stressed then that the demand to pay was final. In that instance, the exhaustion of administrative remedies would

[8] Id. at 29-30.

have been an exercise in futility because it was already the Commissioner of Customs demanding the payment of the deficiency taxes and duties.

3.
There was no ground to pierce the veil of corporate existence

A corporation, upon coming into existence, is invested by law with a personality separate and distinct from those of the persons composing it as well as from any other legal entity to which it may be related. For this reason, a stockholder is generally not made to answer for the acts or liabilities of the corporation, and vice versa. The separate and distinct personality of the corporation is, however, a mere fiction established by law for convenience and to promote the ends of justice. It may not be used or invoked for ends that subvert the policy and purpose behind its establishment, or intended by law to which the corporation owes its being. This is true particularly when the fiction is used to defeat public convenience, to justify wrong, to protect fraud, to defend crime, to confuse legitimate legal or judicial issues, to perpetrate deception or otherwise to circumvent the law. This is likewise true where the corporate entity is being used as an alter ego, adjunct, or business conduit for the sole benefit of the stockholders or of another corporate entity. In such instances, the veil of corporate entity will be pierced or disregarded with reference to the particular transaction involved.[9]

In *Philippine National Bank v. Ritratto Group, Inc.*,[10] the Court has outlined the following circumstances that are useful in the determination of whether a subsidiary is a mere instrumentality of the parent-corporation, *viz*:

> 1. Control, not mere majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
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> 2. Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or dishonest and, unjust act in contravention of plaintiff's legal rights; and
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> 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

In applying the "instrumentality" or "alter ego" doctrine, the courts are concerned with reality, not form, and with how the corporation operated

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[9] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 127181, September 4, 2001, 364 SCRA 375, 382-383.
[10] G.R. No. 142616, July 31, 2001, 362 SCRA 216.

and the individual defendant's relationship to the operation.[11] Consequently, the absence of any one of the foregoing elements disauthorizes the piercing of the corporate veil.

Indeed, the doctrine of piercing the corporate veil has no application here because the Commissioner of Customs did not establish that Oilink had been set up to avoid the payment of taxes or duties, or for purposes that would defeat public convenience, justify wrong, protect fraud, defend crime, confuse legitimate legal or judicial issues, perpetrate deception or otherwise circumvent the law. It is also noteworthy that from the outset the Commissioner of Customs sought to collect the deficiency taxes and duties from URC, and that it was only on July 2, 1999 when the Commissioner of Customs sent the demand letter to *both* URC and Oilink. That was revealing, because the failure of the Commissioner of Customs to pursue the remedies against Oilink from the outset manifested that its belated pursuit of Oilink was only an afterthought.

WHEREFORE, the Court **AFFIRMS** the decision promulgated by the Court of Appeals on September 29, 2003.

No pronouncement on costs of suit.

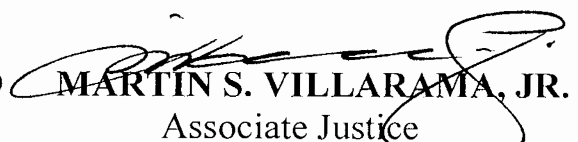
SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

[11] Id. at. 226.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been 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