583 Phil. 706

FIRST DIVISION

[G.R. No. 178759, August 11, 2008]

CHEVRON PHILIPPINES, INC., PETITIONER, VS. COMMISSIONER OF THE BUREAU OF CUSTOMS, RESPONDENT.

D E C I S I O N

CORONA, J.:

This is a petition for review on certiorari[1] of the decision[2] and resolution[3] of the Court of Tax Appeals (CTA) *en banc* dated March 1, 2007 and July 5, 2007, respectively, in CTA EB Nos. 121 and 122 which reversed the decision of the CTA First Division dated April 5, 2005 in CTA Case No. 6358.

Petitioner Chevron Philippines, Inc.[4] is engaged in the business of importing, distributing and marketing of petroleum products in the Philippines. In 1996, the importations subject of this case arrived and were covered by eight bills of lading, summarized as follows:

PRODUCT	ARRIVAL DATE	VESSEL
66,229,960 liters Nan Hai Crude Oil	3/8/1996	Ex MT Bona Spray
6,990,712 liters Reformate	3/18/1996	Ex MT Orient Tiger
16,651,177 liters FCCU Feed Stock	3/21/1996	Ex MT Probo Boaning
236,317,862 liters Oman/Dubai Crude Oil	3/26/1996	Ex MT Violet

51,878,114 liters		Ex MT
Arab Crude Oil	4/10/1996	Crown Jewel

The shipments were unloaded from the carrying vessels onto petitioner's oil tanks over a period of three days from the date of their arrival. Subsequently, the import entry declarations (IEDs) were filed and 90% of the total customs duties were paid. The import entry and internal revenue declarations (IEIRDs) of the shipments were thereafter filed on the following dates:

ENTRY NO.	PRODUCT	ARRIVAL DATE	IED	IEIRD
606-96	66,229,960 liters Nan Hai Crude Oil	3/8/1996	3/12/1996	5/10/1996
604-96	6,990,712 liters Reformate	3/18/1996	3/26/1996	5/10/1996
605-96	16,651,177 liters FCCU Feed Stock	3/21/1996	3/26/1996	5/10/1996
600-96 601-96 602-96 603-96	236,317,862 liters Oman/Dubai Crude Oil	3/26/1996	3/28/1996	5/10/1996
818-96	51,878,114 liters Arab Crude Oil	4/10/1996	4/10/1996	6/21/1996

The importations were appraised at a duty rate of 3% as provided under RA 8180[6] and petitioner paid the import duties amounting to P316,499,021.[7] Prior to the effectivity of RA 8180 on April 16, 1996, the rate of duty on imported crude oil was 10%.

Three years later, then Finance Secretary Edgardo Espiritu received a letter (with annexes) dated June 10, 1999 from a certain Alfonso A. Orioste denouncing the deliberate concealment, manipulation and scheme employed by petitioner and Pilipinas Shell in the importation of crude oil, thereby resulting in huge losses of revenue for the government. This letter was endorsed to the Bureau of Customs (BOC) for investigation on July 19, 1999.[8]

On January 28, 2000, petitioner received a *subpoena duces tecum/ad testificandum* from Conrado M. Unlayao, Chief of the Investigation and Prosecution Division, Customs Intelligence and Investigation Service (IPD-CIIS) of the BOC, to submit pertinent documents in connection with the subject shipments pursuant to the investigation he was conducting thereon. It appeared, however, that the Legal Division of the BOC was also carrying out a separate investigation. Atty. Roberto Madrid (of the latter office) had gone to petitioner's Batangas Refinery and requested the submission of information and documents on the same shipments. This prompted petitioner to seek the creation of a unified team to

exclusively handle the investigation.[9]

On August 1, 2000, petitioner received from the District Collector of Customs of the Port of Batangas (District Collector) a demand letter requiring the immediate settlement of the amount of P73,535,830 representing the difference between the 10% and 3% tariff rates on the shipments. In response, petitioner wrote the District Collector to inform him of the pending request for the creation of a unified team with the exclusive authority to investigate the matter. Furthermore, petitioner objected to the demand for payment of customs duties using the 10% duty rate and reiterated its position that the 3% tariff rate should instead be applied. It likewise raised the defense of prescription against the assessment pursuant to Section 1603 of the Tariff and Customs Code (TCC). Thus, it prayed that the assessment for deficiency customs duties be cancelled and the notice of demand be withdrawn.[10]

In a letter petitioner received on October 12, 2000, respondent Commissioner of the BOC[11] stated that it was the IPD-CIIS which was authorized to handle the investigation, to the exclusion of the Legal Division and the District Collector.[12]

The IPD-CIIS, through Special Investigator II Domingo B. Almeda and Special Investigator III Nemesio C. Magno, Jr., issued a finding dated February 2, 2001 that the import entries were filed beyond the 30-day non-extendible period prescribed under Section 1301 of the TCC. They concluded that the importations were already considered abandoned in favor of the government. They also found that fraud was committed by petitioner in collusion with the former District Collector.[13]

Thereafter, respondent[14] wrote petitioner on October 29, 2001 informing it of the findings of irregularity in the filing and acceptance of the import entries beyond the period required by customs law and in the release of the shipments after the same had already been deemed abandoned in favor of the government. Petitioner was ordered to pay the amount of P1,180,170,769.21 representing the total dutiable value of the importations.[15]

This prompted petitioner to file a petition for review in the CTA First Division on November 28, 2001, asking for the reversal of the decision of respondent.[16]

In a decision promulgated on April 5, 2005, the CTA First Division ruled that respondent was correct when he affirmed the findings of the IPD-CIIS on the existence of fraud. Therefore, prescription was not applicable. Ironically, however, it also held that petitioner did not abandon the shipments. The shipments should be subject to the 10% rate prevailing at the time of their withdrawal from the custody of the BOC pursuant to Sections 204, 205 and 1408 of the TCC. Petitioner was therefore liable for deficiency customs duties in the amount of P105,899,569.05.[17]

Petitioner sought reconsideration of the April 5, 2005 decision while respondent likewise

filed his motion for partial reconsideration. Both motions were denied in a resolution dated September 9, 2005.[18]

After both respondent and petitioner had filed their petitions for review with the CTA *en banc*, docketed as CTA EB No. 121 and CTA EB No. 122, respectively, the petitions were consolidated.

In a decision dated March 1, 2007, the CTA *en banc* held that it was the filing of the IEIRDs that constituted entry under the TCC. Since these were filed beyond the 30-day period, they were not seasonably "entered" in accordance with Section 1301 in relation to Section 205 of the TCC. Consequently, they were deemed abandoned under Sections 1801 and 1802 of the TCC. It also ruled that the notice required under Customs Memorandum Order No. 15-94 (CMO 15-94) was not necessary in view of petitioner's actual knowledge of the arrival of the shipments. It likewise agreed with the CTA Division's finding that petitioner committed fraud when it failed to file the IEIRD within the 30-day period with the intent to "evade the higher rate." Thus, petitioner was ordered to pay respondent the total dutiable value of the oil shipments amounting to P893,781,768.21.[19]

Hence this petition.

There are three issues for our resolution:

1. whether "entry" under Section 1301 in relation to Section 1801 of the TCC refers to the IED or the IEIRD;

2. whether fraud was perpetrated by petitioner and

3. whether the importations can be considered abandoned under Section 1801.

"ENTRY" IN SECTIONS 1301 AND 1801 OF THE TCC REFERS TO BOTH THE IED AND IEIRD

Under Section 1301 of the TCC, imported articles must be entered within a non-extendible period of 30 days from the date of discharge of the last package from a vessel. Otherwise, the BOC will deem the imported goods impliedly abandoned under Section 1801. Thus:

> 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. (Emphasis supplied)
>
> Section 1801. Abandonment, Kinds and Effect of. - An imported article is **deemed abandoned** under any of the following circumstances:
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> xxx xxx xxx
>
> 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. (Emphasis supplied)

Petitioner argues that the IED is an entry contemplated by these sections. According to it, the congressional deliberations on RA 7651 which amended the TCC to provide a non-extendible 30-day period show the legislative intent to expedite the procedure for declaring importations as abandoned. Filing an entry serves as notice to the BOC of the importer's willingness to complete the importation and to pay the proper taxes, duties and fees. Conversely, the non-filing of the entry within the period connotes the importer's disinterest and enables the BOC to consider the goods as abandoned. Since the IED is a BOC form that serves as basis for payment of advance duties on importation as required under PD 1853,[20] it suffices as an entry under Sections 1301 and 1801 of the TCC.[21]

We disagree.

The term "entry" in customs law has a triple meaning. It means (1) the documents filed at the customs house; (2) the submission and acceptance of the documents and (3) the procedure of passing goods through the customs house.[22]

The IED serves as basis for the payment of advance duties on importations whereas the IEIRD evidences the final payment of duties and taxes. The question is: was the filing of the IED sufficient to constitute "entry" under the TCC?

The law itself, in Section 205, defines the meaning of the technical term "entered" as used in the TCC:

> Section 205. Entry, or Withdrawal from Warehouse, for Consumption. - **Imported articles shall be deemed "entered" in the Philippines for consumption when the specified entry form is properly filed and accepted,**

> together with any related documents regained by the provisions of this Code and/or regulations to be filed with such form at the time of entry, at the port or station by the customs official designated to receive such entry papers and any duties, taxes, fees and/or other lawful charges required to be paid at the time of making such entry have been paid or secured to be paid with the customs official designated to receive such monies, provided that the article has previously arrived within the limits of the port of entry.
>
> xxx xxx xxx
>
> (Emphasis supplied)

Clearly, the operative act that constitutes "entry" of the imported articles at the port of entry is the filing and acceptance of the "specified entry form" together with the other documents required by law and regulations. There is no dispute that the "specified entry form" refers to the IEIRD. Section 205 defines the precise moment when the imported articles are deemed "entered."

Moreover, in the old case of *Go Ho Lim v. The Insular Collector of Customs*,[23] we ruled that the word "entry" refers to the regular consumption entry (which, in our current terminology, is the IEIRD) and not the provisional entry (the IED):

> It is disputed by the parties whether the application for the special permit. Exhibit A, containing the misdeclared weight of the 800 cases of eggs, comes within the meaning of the word entry used in section 1290 of the Revised Administrative Code, or said word **entry** means only the original entry and importer's declaration. The court below reversed the decision of the Insular Collector of Customs on the ground that the provisions of section 1290 of the Revised Administrative Code **refer to the regular consumption entry and not to a provisional declaration** made in an application for a special permit, as the one filed by the appellee, to remove the cases of eggs from the customhouse.
>
> This court is of the opinion that certainly the application, Exhibit A, cannot be considered as a final regular entry of the weight of the 800 cases of eggs imported by the appellee, taking into account the fact that said application sought the delivery of said 800 cases of eggs from the pier after examination, and the special permit granted, Exhibit E, provided for delivery to be made after examination by the appraiser. All the foregoing, together with the circumstance that the appellee had to file the regular consumption entry which he bound himself to do, as shown by the application, Exhibit A, logically lead to the conclusion that the declaration of the weight of the 800 cases of eggs made in said application, is merely a provisional entry, and as it is subject to verification by the customhouse examiner, it cannot be considered fraudulent for the purpose of imposing a surcharge of customs duties upon the importer.[24] (Emphasis supplied)

The congressional deliberations on House Bill No. 4502 which was enacted as RA 7651[25] amending the TCC lay down the policy considerations for the non-extendible 30-day period for the filing of the import entry in Section 1301:

> MR. JAVIER (E.).
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> xxx xxx xxx
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> Under Sections 1210[26] and 1301 of the [TCC], Mr. Speaker, import entries for imported articles must be filed within five days from the date of discharge of the last package from the vessel. The five-day period, however, Mr. Speaker, is subject to an **indefinite extension at the discretion of the collector of customs**, which more often than not stretches to more than three months, thus **resulting in considerable delay in the payment of duties and taxes**.
>
> This bill, Mr. Speaker, seeks to amend Sections 1210 and 1301 **by extending the five-day period to thirty days, which will no longer be extendible**, within which import entries must be filed for imported articles. Moreover, to give the importer reasonable time, the bill prescribes a period of fifteen days which may not be extended within which to claim his importation from the time he filed the import entry. Failure to file an import entry or to claim the imported articles within the period prescribed under the proposed measure, such imported articles will be treated as abandoned and declared as *ipso facto* the property of the government to be sold at public auction.
>
> Under this new procedure, Mr. Speaker, **importers will be constrained under the threat of having their importation declared as abandoned** and forfeited in favor of the government **to file import entries and claim their importation as early as possible thus accelerating the collection of duties and taxes.** But providing for a non-extendible period of 30 days within which to file an import entry, an appeal of fifteen days within which to claim the imported article, the bill has removed the discretion of the collector of Customs to extend such period thus minimizing opportunity for graft. Moreover, Mr. Speaker, with these non-extendible periods coupled with the threat of declaration of abandonment of imported articles, both the [BOC] and the importer are under pressure to work for the early release of cargo, thus decongesting all ports of entry and facilitating the release of goods and thereby promoting trade and commerce.
>
> Finally, Mr. Speaker, the speedy release of imported cargo coupled with the sanctions of declaration of abandonment and forfeiture will minimize the pilferage of imported cargo at the ports of entry.[27] (Emphasis supplied)

The filing of the IEIRDs has several important purposes: to ascertain the value of the imported articles, collect the correct and final amount of customs duties and avoid

smuggling of goods into the country.[28] Petitioner's interpretation would have an absurd implication: the 30-day period applies only to the IED while no deadline is specified for the submission of the IEIRD. Strong issues of public policy militate against petitioner's interpretation. It is the IEIRD which accompanies the final payment of duties and taxes. These duties and taxes must be paid in full before the BOC can allow the release of the imported articles from its custody.

Taxes are the lifeblood of the nation. Tariff and customs duties are taxes constituting a significant portion of the public revenue which enables the government to carry out the functions it has been ordained to perform for the welfare of its constituents.[29] Hence, their prompt and certain availability is an imperative need[30] and they must be collected without unnecessary hindrance.[31] Clearly, and perhaps for that reason alone, the submission of the IEIRD cannot be left to the exclusive discretion or whim of the importer.

We hold, therefore, that under the relevant provisions of the TCC,[32] both the IED and IEIRD should be filed within 30 days from the date of discharge of the last package from the vessel or aircraft. As a result, the position of petitioner, that the import entry to be filed within the 30-day period refers to the IED and not the IEIRD, has no legal basis.

THE EXISTENCE OF FRAUD WAS ESTABLISHED

Petitioner also denies the commission of fraud. It maintains that it had no predetermined and deliberate intention not to comply with the 30-day period in order to evade the payment of the 10% rate of duty. Its sole reason for the delayed filing of IEIRDs was allegedly due to the late arrival of the original copies of the bills of lading and commercial invoices which its suppliers could send only after the latter computed the average monthly price of crude oil based on worldwide trading. It claims that the BOC required these original documents to be attached to the IEIRD.

Petitioner's arguments lack merit.

Fraud, in its general sense, "is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another."[33] It is a question of fact and the circumstances constituting it must be alleged and proved in the court below.[34] The finding of the lower court as to the existence or non-existence of fraud is final and cannot be reviewed here unless clearly shown to be erroneous.[35] In this case, fraud was established by the IPD-CIIS of the BOC. Both the CTA First Division and *en banc* agreed completely with this finding.

The evidence showed that petitioner bided its time to file the IEIRD so as to avail of a

lower rate of duty. (At or about the time these developments were taking place, the bill lowering the duty on these oil products from 10% to 3% was already under intense discussion in Congress.) There was a calculated and preconceived course of action adopted by petitioner purposely to evade the payment of the correct customs duties then prevailing. This was done in collusion with the former District Collector, who allowed the acceptance of the late IEIRDs and the collection of duties using the 3% declared rate. A clear indication of petitioner's deliberate intention to defraud the government was its non-disclosure of discrepancies on the duties declared in the IEDs (10%) and IEIRDs (3%) covering the shipments.[36]

It was not by sheer coincidence that, by the time petitioner filed its IEIRDs way beyond the mandated period, the rate of duty had already been reduced from 10% to 3%. Both the CTA Division and *en banc* found the explanation of petitioner (for its delay in filing) untruthful. The bills of lading and corresponding invoices covering the shipments were accomplished immediately after loading onto the vessels.[37] Notably, the memorandum of a district collector cited by petitioner as basis for its assertion that original copies were required by the BOC was dated October 30, **2002**.[38] There is no showing that in 1996, the time pertinent in this case, this was in fact a requirement.

More importantly, the absence of supporting documents should not have prevented petitioner from complying with the mandatory and non-extendible period, specially since the consequences of delayed filing were extremely serious. In addition, these supporting documents were not conclusive on the government.[39] If this kind of excuse were to be accepted, then the collection of customs duties would be at the mercy of importers.

Hence, due to the presence of fraud, the prescriptive period of the finality of liquidation under Section 1603 was inapplicable:

> 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.[40]

THE IMPORTATIONS WERE ABANDONED IN FAVOR OF THE GOVERNMENT

The law is clear and explicit. It gives a non-extendible period of 30 days for the importer to file the entry which we have already ruled pertains to **both** the IED and IEIRD. Thus under Section 1801 in relation to Section 1301, when the importer fails to file the entry within the said 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:

> Section 1801. Abandonment, Kinds and Effect of. -
>
> xxx xxx xxx
>
> **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**.

According to petitioner, the shipments should not be considered impliedly abandoned because none of its overt acts (filing of the IEDs and paying advance duties) revealed any intention to abandon the importations.[41]

Unfortunately for petitioner, it was the law itself which considered the importation abandoned when it failed to file the IEIRDs within the allotted time. Before it was amended, Section 1801 was worded as follows:

> Sec. 1801. Abandonment, Kinds and Effect of. -- **Abandonment** is express when it is made direct to the Collector by the interested party in writing and it is **implied when, from the action or omission of the interested party, an intention to abandon can be clearly inferred.** The failure of any interested party to file the import entry within fifteen days or any extension thereof from the discharge of the vessel or aircraft, shall be implied abandonment. An implied abandonment shall not be effective until the article is declared by the Collector to have been abandoned after notice thereof is given to the interested party as in seizure cases.
>
> Any person who abandons an imported article renounces all his interests and property rights therein.[42]

After it was amended by RA 7651, there was an indubitable shift in language as to what could be considered implied abandonment:

> Section 1801. Abandonment, Kinds and Effect of. - An imported article is **deemed abandoned** under any of the following circumstances:
>
> a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or
>
> 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 xxxx

From the wording of the amendment, RA 7651 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.[43] It would be error on our part to continue applying the old law despite the clear changes introduced by the amendment.

NOTICE WAS NOT NECESSARY UNDER THE CIRCUMSTANCES OF THIS CASE

Petitioner also avers that the importations could not be deemed impliedly abandoned because respondent did not give it any notice as required by Section 1801 of the TCC:

> Sec. 1801. Abandonment, Kinds and Effect of. - An imported article is deemed abandoned under any of the following circumstances:
>
> xxx xxx xxx
>
> 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 xxx (Emphasis supplied)

Furthermore, it claims that notice and abandonment proceedings were required under the BOC's guidelines on abandonment (CMO 15-94):

> SUBJECT: REVISED GUIDELINES ON ABANDONMENT
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> xxx xxx xxx
>
> B. ADMINISTRATIVE PROVISIONS
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> xxx xxx xxx
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> B.2 Implied abandonment occurs when:
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> B.2.1 The owner, importer, consignee, interested party or his authorized broker/representative, after due notice, fails to file an entry within a non-extendible period of thirty (30) days from the date of discharge of last package from the carrying vessel or aircraft.
>
> xxx xxx xxx
>
> **Due notice to the consignee/importer/owner/interested party shall be by means of posting of a notice to file entry at the Bulletin Board seven (7)**

days prior to the lapse of the thirty (30) day period by the Entry Processing Division listing the consignees who/which have not filed the required import entries as of the date of the posting of the notice **and notifying them of the arrival of their shipment**, the name of the carrying vessel/aircraft, Voy. No. Reg. No. and the respective B/L No./AWB No., with a warning, as shown by the attached form, entitled: "URGENT NOTICE TO FILE ENTRY" which is attached hereto as Annex A and made an integral part of this Order.

xxx xxx xxx

C. OPERATIONAL PROVISIONS

xxx xxx xxx

C.2 On Implied Abandonment:

C.2.1 When no entry is filed

C.2.1.1 **Within twenty-four (24) hours after the completion of the boarding formalities**, the Boarding Inspector must submit the **manifests** to the Bay Service or similar office so that the Entry Processing Division copy may be put to use by said office as soon as possible.

C..2.1.2 **Within twenty-four (24) hours after the completion of the unloading of the vessel/aircraft**, the Inspector assigned in the vessel/aircraft, shall issue a **certification** addressed to the Collector of Customs (Attention: Chief, Entry Processing Division), copy furnished Chief, Data Monitoring Unit, specifically stating the time and date of discharge of the last package from the vessel/aircraft assigned to him. Said certificate must be encoded by Data Monitoring Unit in the Manifest Clearance System.

C.2.1.3 **Twenty-three (23) days after the discharge of the last package** from the carrying vessel/aircraft, the Chief, Data Monitoring Unit shall cause the printing of the **URGENT NOTICE TO FILE ENTRY** in accordance with the attached form, Annex A hereof,

sign the URGENT NOTICE and **cause its posting continuously for seven (7) days at the Bulletin Board for the purpose until the lapse of the thirty (30) day period.**

C.2.1.4 The Chief, Data Monitoring Unit, shall **submit a weekly report** to the Collector of Customs with a listing by vessel, Registry Number of shipments/ importations which shall be deemed abandoned for failure to file entry within the prescribed period and **with certification** that per records available, the thirty (30) day period within which to file the entry therefore has lapsed without the consignee/importer filing the entry and that the proper posting of notice as required has been complied with.

xxx xxx xxx

C.2.1.5 Upon receipt of the report, the Collector of Customs shall issue an **order** to the Chief, Auction and Cargo Disposal Division, **to dispose of the shipment** enumerated in the report prepared by the Chief, Data Monitoring Unit on the ground that those are abandoned and *ipso facto* deemed the property of the Government to be disposed of as provided by law.

xxx xxx xxx[44] (Emphasis supplied)

We disagree.

Under the peculiar facts and circumstances of this case, due notice was not necessary. The shipments arrived in 1996. The IEDs and IEIRDs were also filed in 1996. However, respondent discovered the fraud which attended the importations and their subsequent release from the BOC's custody only in 1999. Obviously, the situation here was not an ordinary case of abandonment wherein the importer merely decided not to claim its importations. Fraud was established against petitioner; it colluded with the former District Collector. Because of this, the scheme was concealed from respondent. The government was unable to protect itself until the plot was uncovered. The government cannot be crippled by the malfeasance of its officials and employees. Consequently, it was impossible for respondent to comply with the requirements under the rules.

By the time respondent learned of the anomaly, the entries had already been belatedly filed

and the oil importations released and presumably used or sold. It was a *fait accompli*. Under such circumstances, it would have been against all logic to require respondent to still post an "urgent notice to file entry" before declaring the shipments abandoned.

The minutes of the deliberations in the House of Representatives Committee on Ways and Means on the proposed amendment to Section 1801 of the TCC show that the phrase "after due notice" was intended for owners, consignees, importers of the shipments who live in rural areas or distant places far from the port where the shipments are discharged, who are unfamiliar with customs procedures and need the help and advice of people on how to file an entry:

xxx xxx xxx

> MR. FERIA. 1801, your Honor. The question that was raised here in the last hearing was whether notice is required to be sent to the importer. And, it has been brought forward that we can dispense with the notice to the importer because the shipping companies are notifying the importers on the arrival of their shipment. And, so that **notice** is sufficient to . . . sufficient for the claimant or importer **to know that the shipments have already arrived**.
>
> Second, your Honor, the legitimate businessmen always have . . . they have their agents with the shipping companies, and so they should know the arrival of their shipment.

xxx xxx xxx

> HON. QUIMPO. Okay. Comparing the two, Mr. Chairman, I cannot help but notice that in the substitution now there is a failure to provide the phrase AFTER NOTICE THEREOF IS GIVEN TO THE INTERESTED PARTY, which was in the original. Now in the second, in the substitution, it has been deleted. I was first wondering whether this would be necessary in order to provide for due process. I'm thinking of certain cases, Mr. Chairman, where the **owner might not have known**. This is now on implied abandonment not the express abandonment.

xxx xxx xxx

> HON. QUIMPO. Because I'm thinking, Mr. Chairman. I'm thinking of certain situations where the importer even though, you know, in the normal course of business sometimes **they fail to keep up the date or something to that effect**.
>
> THE CHAIRMAN. Sometimes their cargoes get lost.
>
> HON. QUIMPO. So just to, you know . . . anyway, this is only a **notice to be sent to them that they have a cargo there**.

xxx xxx xxx

> MR. PARAYNO. Your Honor, I think as a general rule, five days [extendible] to another five days is a good enough period of time. **But we cannot discount that there are some consignees of shipments located in rural areas or distant from urban centers where the ports are located to come to the [BOC] and to ask for help particularly if a ship consignment is made to an individual who is uninitiated with customs procedures. He will probably have the problem of coming over to the urban centers, seek the advice of people on how to file entry. And therefore, the five day extendible to another five days might really be a tight period for some. But the majority of our importers are knowledgeable of procedures.** And in fact, it is in their interest to file the entry even before the arrival of the shipment. That's why we have a procedure in the bureau whereby importers can file their entries even before the shipment arrives in the country.[45] (Emphasis supplied)

xxx xxx xxx

Petitioner, a regular, large-scale and multinational importer of oil and oil products, fell under the category of a knowledgeable importer which was familiar with the governing rules and procedures in the release of importations.

Furthermore, notice to petitioner was unnecessary because it was fully aware that its shipments had in fact arrived in the Port of Batangas. The oil shipments were discharged from the carriers docked in its private pier or wharf, into its shore tanks. From then on, petitioner had actual physical possession of its oil importations. It was thus incumbent upon it to know its obligation to file the IEIRD within the 30-day period prescribed by law. As a matter of fact, importers such as petitioner can, under existing rules and regulations, file in advance an import entry even before the arrival of the shipment to expedite the release of the same. However, it deliberately chose not to comply with its obligation under Section 1301.

The purpose of posting an "urgent notice to file entry" pursuant to Section B.2.1 of CMO 15-94 is only to notify the importer of the "arrival of its shipment" and the details of said shipment. Since it already had knowledge of such, notice was superfluous. Besides, the entries had already been filed, albeit belatedly. It would have been oppressive to the government to demand a literal implementation of this notice requirement.

AN ABANDONED ARTICLE SHALL *IPSO FACTO* BE DEEMED THE PROPERTY OF THE GOVERNMENT

Section 1802 of the TCC provides:

> Sec. 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. (Emphasis supplied)

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."[46] 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, as amended by RA 7651.

A historical review of the pertinent provisions of the TCC dispels any view that is contrary to the automatic transfer of ownership of the abandoned articles to the government by the mere fact of an importer's failure to file the required entries within the mandated period.

Under the former Administrative Code, Act 2711,[47] Section 1323 of Article XV thereof provides:

> Sec. 1323. When implied abandonment takes effect -- Notice -- An implied abandonment shall not take effect until after the property shall be declared by the collector to have been abandoned and notice to the party in interest as in seizure cases.

Thereafter, RA 1937[48] was enacted. Section 1801 thereof provides:

> Sec. 1801. Abandonment, Kinds and Effect of. -- Abandonment is express when it is made direct to the Collector by the interested party in writing and it is implied when, from the action or omission of the interested party, an intention to abandon can be clearly inferred. The failure of any interested party to file the import entry within fifteen days or any extension thereof from the discharge of the vessel or aircraft, shall be implied abandonment. An implied abandonment shall not be effective until the article is declared by the Collector to have been abandoned after notice thereof is given to the interested party as in seizure cases.
>
> Any person who abandons an imported article renounces all his interests and property rights therein.

PD 1464[49] did not amend the provisions of the TCC on abandonment. The latest amendment was introduced by Section 1802 of RA 7651 which provides:

> Sec. 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.

The amendatory law, RA 7651, deleted the requirement that there must be a declaration by the Collector of Customs that the goods have been abandoned by the importers and that the latter shall be given notice of said declaration before any abandonment of the articles becomes effective.

No 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.[50]

Petitioner claims it is arbitrary, harsh and confiscatory to deprive importers of their property rights just because of their failure to timely file the IEIRD. In effect, petitioner is challenging the constitutionality of Sections 1801 and 1802 by contending that said provisions are violative of substantive and procedural due process. We disallow this collateral attack on a presumably valid law:

> We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[51]
> Besides,
>
> [a] law is deemed valid unless declared null and void by a competent court; more so when the issue has not been duly pleaded in the trial court. The question of constitutionality must be raised at the earliest opportunity. xxx The settled rule is that courts will not anticipate a question of constitutional law in advance of the necessity of deciding it.[52]

Be that as it may, the intent of Congress was unequivocal. Our policy makers wanted to do away with lengthy proceedings before an importation can be considered abandoned:

xxx xxx xxx

> MR. PARAYNO. Thank you, Mr. Chairman. The proposed amendment to Section 1801 on the abandonment, kinds and effects. This aimed to facilitate, Mr. Chairman, the process by which this activity is being acted upon at the moment. The intention, Mr. Chairman, is for the Customs Administration to be able to maximize the revenue that can be derived from abandoned goods, and the problem that we are encountering at the moment is that we have to go through a lengthy process similar to a seizure proceedings to be able to finally declare the cargo, the abandoned cargo forfeited in favor of the government and therefore, may be disposed of pursuant to law. And that therefore, **the proposed amendment particularly on the implied abandonment as framed here will do away with the lengthy process of seizure proceedings** and therefore,

enable us to dispose of the shipments through public auction and other modes of disposal as early as possible.

THE CHAIRMAN. In other words, Commissioner, **there'll be no need for a seizure in the case of abandonment because under the proposed bill it's considered to be government property**.[53]

xxx xxx xxx

CONCLUSION

Petitioner's failure to file the required entries within a non-extendible period of thirty days from date of 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 (that is, they became) the property of the government. 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 imported crude oil amounting to P1,210,280,789.21 reduced by the total amount of duties paid amounting to P316,499,021.00 thereby leaving a balance of P893,781,768.21.

By the very nature of its functions, the CTA is a highly specialized court specifically created for the purpose of reviewing tax and customs cases. It is dedicated exclusively to the study and consideration of revenue-related problems and has necessarily developed an expertise on the subject. Thus, as a general rule, its findings and conclusions are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority. There is no such showing here.

WHEREFORE, the petition is hereby **DENIED.** Petitioner Chevron Philippines, Inc. is **ORDERED** to pay the amount of EIGHT HUNDRED NINETY THREE MILLION SEVEN HUNDRED EIGHTY ONE THOUSAND SEVEN HUNDRED SIXTY EIGHT PESOS AND TWENTY-ONE CENTAVOS (P893,781,768.21) plus six percent (6%) legal interest *per annum* accruing from the date of promulgation of this decision until its finality. Upon finality of this decision, the sum so awarded shall bear interest at the rate of twelve percent (12%) *per annum* until its full satisfaction.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Austria-Martinez, and *Leonardo-De Castro, JJ.,* concur.

* As replacement of Justice Adolfo S. Azcuna who is on official leave per Special Order No. 510.

[1] Under Rule 45 of the Rules of Court in relation to Rule 16 of the Revised Rules of the Court of Tax Appeals.

[2] Penned by Associate Justice Juanito C. Castañeda and concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez. Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista dissented. *Rollo*, pp. 86-133.

[3] Id., pp. 134-138.

[4] Formerly known as Caltex (Philippines), Inc.

[5] *Rollo*, p. 88.

[6] Otherwise known as the Downstream Oil Industry Deregulation Act of 1996.

[7] *Rollo*, p. 121.

[8] Id., p. 89.

[9] Id.

[10] Id., pp. 89,142-145.

[11] Through Commissioner Renato A. Ampil.

[12] *Rollo*, pp. 90, 146.

[13] Id., pp. 90-93. The name of this former District Collector does not appear in the rollo.

[14] Through Commissioner Titus B. Villanueva.

[15] *Rollo*, pp. 93, 147.

[16] Id., pp. 93, 149-157. The October 29, 2001 demand letter is a decision within the purview of Section 7, RA 1125 (An Act Creating the CTA [1954]). According to the decision of the CTA First Division, the BOC sent another letter, dated December 28, 2001, demanding payment of the deficiency customs duties. Since petitioner did not pay, the BOC instituted a civil case for collection of a sum of money docketed as civil case no. 02-

103239 in the Regional Trial Court, Manila, Branch 25 on April 11, 2002. (Id., p. 167.)

[17] This includes a 25% surcharge due to fraud; id., p. 180.

[18] Id., pp. 236-240.

[19] The total amount of duties paid amounting to P316,499,021 was subtracted from the total dutiable value of the shipments amounting to P1,210,280,789.21; id., p. 121.

[20] PD 1853 was the law that took effect on January 1, 1983, requiring deposits of duties upon the opening of letters of credit to cover imports. Section 2 thereof states:

"Section 2. The amount of the duties due shall be based on the declaration of the applicant for the letter of credit/importer, subject to the penalties prescribed under Sec. 2503 of the [TCC] of 1978, as amended."

[21] *Rollo*, pp. 32-36.

[22] *Rodriguez v. CA*, G.R. No. 115218, 18 September 1995, 248 SCRA 288, 297, citing the Tariff and Customs Code, Section 1201 and IV Tejam, Commentaries on the Revised Tariff and Customs Code 2230 [1987].

[23] 64 Phil. 64 (1937).

[24] Id., pp. 66-67. See *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, 31 March 2005, 454 SCRA 301, 304.

[25] An Act to Revitalize and Strengthen the Bureau of Customs, Amending for the Purpose Certain Sections of the Tariff and Costoms Code of the Philippines, as Amended (Approved on June 4, 1993).

[26] Section 1210. - *Disposition of Imported Articles Remaining on Vessel After Time for Unlading*. - Imported articles remaining on board any vessel after the expiration of the said period for discharge and not reported for transshipment to another port, may be unladen by the customs authorities and stored at the vessel's expense.

Unless prevented by causes beyond the vessel's control, such as port congestion, strikes, riots or civil commotions, failure of vessel's gear, bad weather, and similar causes, articles so stored shall be entered within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft and shall be claimed within fifteen (15) days, which shall not likewise be extendible from the date of posting of the notice to claim in conspicuous places in the [BOC]. If not entered or not claimed, it shall

be disposed of in accordance with the provisions of this Code.

[27] Sponsorship Speech of Exequiel B. Javier, March 22, 1993.

[28] *Rollo*, p. 176.

[29] *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 106611, 21 July 1994, 234 SCRA 348, 356; *Commissioner of Customs v. Makasiar*, G.R. No. 79307, 29 August 1989, 177 SCRA 27, 34. According to then Senator Gloria Macapagal-Arroyo (now President of the Republic of the Philippines):

"The [BOC] is one of the premier revenue collecting arms of the Government, who together with the Bureau of the Internal Revenue accounts for the collection of more than eighty percent (80%) of government revenue." (March 29, 1993, Explanatory Note of Senate Bill No. 451, p. 14)

[30] *Commissioner of Internal Revenue v. Goodrich International Rubber Co.*, G.R. No. L-22265, 27 March 1968, 22 SCRA 1256, 1257; *Commissioner of Internal Revenue v. Pineda*, G.R. No. L-22734, 15 September 1967, 21 SCRA 105, 110.

[31] *Philex Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 125704, 28 August 1998, 294 SCRA 687, 696.

[32] Sections 205, 1301 and 1801.

[33] *Commissioner of Internal Revenue v. Estate of Benigno P. Toda, Jr.*, G.R. No. 147188, 14 September 2004, 438 SCRA 290, 300, citing *Commissioner of Internal Revenue v. CA*, 327 Phil. 1, 33 (1996).

[34] *Commissioner of Internal Revenue v. Ayala Securities Corporation*, G.R. No. L-29485, 31 March 1976, 70 SCRA 205, 209.

[35] Id., pp. 209-210, citations omitted.

[36] *Rollo*, p. 178.

[37] Id., pp. 108-109.

[38] Id., p. 68.

[39] *Caltex (Philippines), Inc. v. CA*, G.R. No. 104781, 10 July 1998, 292 SCRA 273, 284-

285.

[40] Before it was amended by RA 9135 (An Act Amending Certain Provisions of PD 1464, Otherwise Known as the TCC of The Philippines, as Amended, and for Other Purposes [2001]).

[41] *Rollo*, p. 40.

[42] RA 1937 entitled "An Act to Revise and Codify the Tariff and Customs Laws of the Philippines" (Approved on June 22, 1957).

[43] See *Parras v. Land Registration Commission*, 108 Phil. 1142, 1146 (1960) and *Phil. Packing Corp. v. Coll. of Internal Rev.*, 100 Phil. 545, 553 (1956).

[44] Dated April 29, 1994; *rollo*, pp. 49-51.

[45] October 21, 1992, pp. II-1 to II-4, III-2.

[46] Words and Phrases, Permanent Edition, Volume 22A (1958), p. 446.

[47] An Act Amending the Administrative Code (March 10, 1917).

[48] Supra note 42.

[49] A Decree to Consolidate and Codify All Tariff and Customs Laws of the Philippines (Approved on June 11, 1978).

[50] In the Sponsorship Speech of Senator Herrera, he stated:

"Specifically, [Senate Bill No. 451] seeks to speed up the movement of the imported goods by clarifying when imported articles are being abandoned...." (March 29, p. 20.)

[51] *Tan v. Bausch Lomb, Inc.*, G.R. No. 148420, 15 December 2005, 478 SCRA 115, 123-124, citing *Olsen and Co., v. Aldanese*, 43 Phil. 259 (1922); *San Miguel Brewery v. Magno*, 128 Phil. 328 (1967).

[52] *Philippine National Bank v. Palma*, G.R. No. 157279, 9 August 2005, 466 SCRA 307, 323, citations omitted.

[53] Minutes of the Deliberations in the House of Representatives Committee on Ways and Means, October 21, 1992, pp. I-2 to I-3.