Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

G.R. No. 195876

Present:

VELASCO, JR., *J.*,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

December 5, 2016

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DECISION

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 13 May 2010 Decision[1] and the 22 February 2011 Resolution[2] rendered by the Court of Tax Appeals (CTA) Former *En Banc* in C.T.A. EB No. 472 which dismissed petitioner's petition, and accordingly affirmed with modification as to the additional imposition of legal interest the 19 June 2008 Decision[3] of the CTA Former First Division (CTA in Division) ordering petitioner to pay the amount of ₱936,899,883.90, representing the total dutiable value of its 1996 crude oil importation, which

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1 *Rollo*, pp. 131-156; Penned by Associate Justice Olga Palanca-Enriquez with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista and Erlinda P. Uy concurring.

2 Id. at 157-186; Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy and Caesar A. Casanova concurring with a Dissenting Opinion penned by Associate Justice Olga Palanca-Enriquez with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista concurring.

3 Id. at 341-353; Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

was considered as abandoned in favor of the government by operation of law.

The Facts

The factual antecedents of the case are as follows:

On 16 April 1996, Republic Act (R.A.) No. 8180,[4] otherwise known as the "Downstream Oil Industry Deregulation Act of 1996" took effect. It provides, among others, for the reduction of the tariff duty on imported crude oil from ten percent (10%) to three percent (3%). The particular provision of which is hereunder quoted as follows:

> **Section 5.** ***Liberalization of Downstream Oil Industry and Tariff Treatment.*** – x x x
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> b) Any law to the contrary notwithstanding and starting with the effectivity of this Act, tariff shall be imposed and collected on imported crude oil at the rate of three percent (3%) and imported refined petroleum products at the rate of seven percent (7%), except fuel oil and LPG, the rate for which shall be the same as that for imported crude oil *Provided*, That beginning on January 1, 2004 the tariff rate on imported crude oil and refined petroleum products shall be the same: *Provided, further*, That this provision may be amended only by an Act of Congress.

Prior to its effectivity, petitioner's importation of 1,979,674.85 U.S. barrels of Arab Light Crude Oil, thru the *Ex MT Lanistels*, arrived on 7 April 1996 nine (9) days earlier than the effectivity of the liberalization provision. Within a period of three days thereafter, or specifically on 10 April 1996, said shipment was unloaded from the carrying vessels docked at a wharf owned and operated by petitioner, to its oil tanks located at Batangas City.

Subsequently, petitioner filed the Import Entry and Internal Revenue Declaration and paid the import duty of said shipment in the amount of ₱11,231,081.00 on 23 May 1996.

More than four (4) years later or on 1 August 2000, petitioner received a demand letter[5] dated 27 July 2000 from the Bureau of Customs (BOC), through the District Collector of Batangas, assessing it to pay the

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4 R.A. No. 8180 was declared unconstitutional in the consolidated cases of *Tatad v. The Sec. of the Dept. of Energy*, 346 Phil. 321 (1997). However, the events and transactions (importations) involved in the present case occurred when R.A. No. 8180 was still in effect.

5 *Rollo*, p. 452.

deficiency customs duties in the amount of ₱120,162,991.00 due from the aforementioned crude oil importation, representing the difference between the amount allegedly due (at the old rate of ten percent (10%) or before the effectivity of R.A. No. 8180) and the actual amount of duties paid by petitioner (on the rate of 3%).

Petitioner protested the assessment on 14 August 2000,[6] to which the District Collector of the BOC replied on 4 September 2000[7] reiterating his demand for the payment of said deficiency customs duties.

On 11 October 2000,[8] petitioner appealed the 4 September 2000 decision of the District Collector of the BOC to the respondent and requested for the cancellation of the assessment for the same customs duties.

However, on 29 October 2001,[9] five years after petitioner paid the allegedly deficient import duty' it received by telefax from the respondent a demand letter for the payment of the amount of ₱936,899,885.90, representing the dutiable value of its 1996 crude oil importation which had been allegedly abandoned in favor of the government by operation of law. Respondent stated that Import Entry No. 683-96 covering the subject importation had been irregularly filed and accepted beyond the thirty-day (30) period prescribed by law. Petitioner protested the aforesaid demand letter on 7 November 2001[10] for lack of factual and legal basis, and on the ground of prescription.

Seeking clarification as to what course of action the BOC is taking, and reiterating its position that the respondent's demand letters dated 29 October 2001 and 27 July 2000 have no legal basis, petitioner sent a letter to the Director of Legal Service of the BOC on 3 December 2001 for said purpose.

On 28 December 2001,[11] BOC Deputy Commissioner Gil A. Valera sent petitioner a letter which stated that the latter had not responded to the respondent's 29 October 2001 demand letter and demanded payment of the amount of ₱936,899,885.90, under threat to hold delivery of petitioner's

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6 Id. at 453-457.
7 Id. at 458-459.
8 Id. at 460-465.
9 Id. at 466.
10 Id. at 467-471.
11 Id. at 472.

subsequent shipments, pursuant to Section 1508[12] of the Tariff and Customs Code of the Philippines (TCCP),[13] and to file a civil complaint against petitioner.

In reply thereto, petitioner sent a letter dated 4 January 2002[14] to the BOC Deputy Commissioner and expressed that it had already responded to the aforesaid demand letter through the letters dated 7 November 2001 and 3 December 2001 sent to respondent and to the Director of Legal Service of the BOC, respectively.

On 11 April 2002, the BOC filed a civil case for collection of sum of money against petitioner, together with Caltex Philippines, Inc. as co-party therein, docketed as Civil Case No. 02103239, before Branch XXV, Regional Trial Court (RTC), of the City of Manila.[15]

Consequently, on 27 May 2002, petitioner filed with the Court of Tax Appeals (CTA) a Petition for Review, raffled to the Former First Division (CTA in Division), and docketed as C.T.A. Case No. 6485, upon consideration that the civil complaint filed in the RTC of Manila was the final decision of the BOC on its protest.[16]

Respondent filed on 2 August 2002 a motion to dismiss the said petition raising lack of jurisdiction and failure to state a cause of action as its grounds, which the CTA in Division denied in the Resolution dated 17 January 2003. Likewise, respondent's motion for reconsideration filed on 14 February 2003 was denied on its 16 June 2003 Resolution.[17]

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12 Sec. 1508. *Authority of the Collector of Customs to Hold the Delivery or Release of Imported Articles.* – Whenever any importer, except the government, has an outstanding and demandable account with the Bureau of Customs, the Collector shall hold the delivery of any article imported or consigned to such importer unless subsequently authorized by the Commissioner of Customs, and upon notice as in seizure cases, he may sell such importation or any portion thereof to cover the outstanding account of such importer; Provided, however, That at any time prior to the sale, the delinquent importer may settle his obligations with the Bureau of Customs, in which case the aforesaid articles may be delivered upon payment of the corresponding duties and taxes and compliance with all other legal requirements.

13 Presidential Decree No. 1464 (The Tariff and Customs Code of 1978 - A Decree to Consolidate and Codify All the Tariff and Customs Laws of the Philippines), as amended by R.A. No. 1937 (An Act to Revise and Codify the Tariff and Customs Laws of the Philippines), and by R.A. No. 7651 (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).

14 *Rollo*, p. 473.

15 Id. at 136.

16 Id.

17 Id. at 136-137.

Subsequently, respondent, through the Office of the Solicitor General, filed on 13 August 2003 before the Court of Appeals (CA) a Petition for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction, docketed as CA-G.R. SP No. 78563, praying for the reversal and setting aside of the CTA in Division's Resolutions dated 17 January 2003 and 16 June 2003.[18]

In the interim, respondent filed his Answer to the petition in C.T.A. Case No. 6485 on 20 October 2003 which reiterated the lack of jurisdiction and failure to state a cause of action. Thereafter, trial on the merits ensued.

On 15 February 2007, the Former First Division of the CA dismissed respondent's petition in CA-G.R. SP No. 78563. Similarly, respondent's motion for reconsideration of the 15 February 2007 Decision was denied in its 24 July 2007 Resolution.[19]

The Ruling of the CTA in Division

In a Decision dated 19 June 2008[20], the CTA in Division ruled to dismiss the Petition for Review on C.T.A. Case No. 6485 for lack of merit and accordingly ordered petitioner to pay the entire amount of ₱936,899,883.90[21] representing the total dutiable value of the subject shipment of Arab Light Crude Oil on the ground of implied abandonment pursuant to Sections 1801 and 1802 of the TCCP.

Relevant thereto, the CTA in Division made the following factual and legal findings: (a) that petitioner filed the specified entry form (Import Entry and Internal Revenue Declaration) beyond the 30-day period prescribed under Section 1301 of the TCCP;[22] (b) that for failure to file within the aforesaid 30-day period, the subject importation was deemed abandoned in favor of the government in accordance with Sections 1801 and 1802 of the TCCP;[23] (c) that petitioner's excuses in the delay of filing its Import Entry and Internal Revenue Declaration were implausible[24]; (d) that since the government became the owner of the subject shipment by operation of law, petitioner has no right to withdraw the same and should be held liable to pay

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18 Id. at 137.
19 Id.
20 Id. at 341-353.
21 Note that, as contained in the demand letters dated 29 October 2001 and 28 December 2001 sent by respondent to petitioner, the amount being collected was ₱936,899,885.90.
22 *Rollo*, pp. 346-347.
23 Id. at 347-350.
24 Id. at 350.

for the total dutiable value of said shipment computed at the time the importation was withdrawn from the carrying vessel pursuant to Section 204 of the TCCP;[25] (e) that there was fraud in the present case considering that "the District Collector, in conspiracy with the officials of Caltex and Shell acted without authority or [with] abused (sic) [of] authority by giving undue benefits to the importers by allowing the processing, payment and subsequent release of the shipments to the damage and prejudice of the government who, under the law is already the owner of the shipments x x x;" thus, prescription under Section 1603 of the TCCP does not apply herein;[26] and (f) that the findings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts; and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the government structure, should not be disturbed.[27]

On 24 February 2009, the CTA in Division denied petitioner's Motion for Reconsideration for lack of merit citing Section 5(b),[28] Rule 6 of the 2005 Revised Rules of the CTA, as sole legal basis in considering the Memorandum dated 2 February 2001 issued by the Customs Intelligence & Investigation Service, Investigation & Prosecution Division (CIIS-IPD) of the BOC as evidence to establish fraud, and the case of *Chevron Phils., Inc. v. Commissioner of the Bureau of Customs*,[29] as the jurisprudential foundation therein.[30]

Aggrieved, petitioner appealed to the CTA Former *En Banc* by filing a Petition for Review on 31 March 2009, under Section 3(b), Rule 8 of the 2005 Revised Rules of the CTA, as amended, in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended, docketed as C.T.A. EB No. 472.

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25 Id. at 350-351.

26 Id. at 351-352; Citing pertinent portion of the Memorandum dated 2 February 2001 issued by the Investigation and Prosecution Division (IPD) of the BOC.

27 Id. at 352.

28 SEC. 5. *Answer.* –

x x x x

(b) *Transmittal of records.* – The respondent xxx Commissioner of Customs, xxx within ten days after his answer, xxx shall certify and forward to the Court all the records of the case in their possession, with the pages duly numbered, and, if the records are in separate folders, then the folders will also be numbered. If there are no records, such fact shall be manifested to the Court within the same period of ten days. The Court may, on motion, and for good cause shown, grant an extension of time within which to submit the aforesaid records of the case. Failure to transmit the records within the time prescribed herein or within the time allowed by the Court may constitute indirect contempt of court.

29 583 Phil. 706 (2008).

30 *Rollo*, pp. 354-358.

The Ruling of the CTA Former En Banc

In the 13 May 2010 Decision[31], the CTA Former *En Banc* affirmed the CTA in Division's ruling pertaining to the implied abandonment caused by petitioner's failure to file the Import Entry and Internal Revenue Declaration within the 30-day period, and transfer of ownership by operation of law to the government of the subject shipment in accordance with Sections 1801 and 1802, in relation to Section 1301, of the TCCP, and with the pronouncements made in the *Chevron case*. Notably however, the *ponente* of the assailed Decision declared therein that the existence of fraud is not controlling in the case at bench and would not actually affect petitioner's liability to pay the dutiable value of its imported crude oil, pertinent portion of which are quoted hereunder for ready reference, to wit:

> **As regards the issue on the existence of fraud, it should be emphasized that fraud is not controlling in this case. Even in the absence of fraud, petitioner Shell is still liable for the payment of the dutiable value by operation of law.** The liability of petitioner Shell for the payment of the dutiable value of its imported crude oil arose from the moment it appropriated for itself the said importation, which were already a property of the government by operation of law. **Absence of fraud in this case would not exclude petitioner Shell from the coverage of *Sections 1801 and 1802* of the *TCCP*.**[32] (Emphasis supplied)

Furthermore, citing the case of *Eastern Shipping Lines, Inc. v. Court of Appeals and Mercantile Insurance Company, Inc.*,[33] the CTA Former *En Banc* imposed an additional legal interest of six percent (6%) *per annum* on the total dutiable value of ₱936,899,883.90, accruing from the date said decision was promulgated until its finality; and afterwards, an interest rate of twelve percent (12%) *per annum* shall be applied until its full satisfaction.[34]

Not satisfied, petitioner filed a motion for reconsideration thereof which was denied in the assailed Resolution dated 22 February 2011.

Consequently, this Petition for Review wherein petitioner seeks the reversal and setting aside of the aforementioned Decision and Resolution dated 13 May 2010 and 22 February 2011, respectively, and accordingly prays that a decision be rendered finding: (a) that petitioner has already paid the proper duties on its importation and therefore not liable anymore; and (b)

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31 Id. at 131-156.
32 Id. at 152-153.
33 G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.
34 *Rollo*, pp. 153-154.

that petitioner is not deemed to have abandoned its subject shipment; or, in the alternative, (c) that respondent's attempt to collect is devoid of any legal and factual basis considering that the right to collect against petitioner relating to its subject shipment has already prescribed.

In support of its petition, petitioner posits the following assigned errors:

I

THE CTA FORMER *EN BANC* ERRED WHEN IT HELD IN THE QUESTIONED *DECISION* THAT PETITIONER PSPC IS DEEMED TO HAVE IMPLIEDLY ABANDONED THE SUBJECT SHIPMENT AND, THUS, IS LIABLE FOR THE ENTIRE VALUE OF THE SUBJECT SHIPMENT, PLUS INTEREST, DESPITE THE FACT THAT SUCH CLAIM, IF ANY AT ALL, HAS ALREADY PRESCRIBED, ESPECIALLY BECAUSE PETITIONER PSPC DID NOT COMMIT ANY FRAUD.

II

THE CTA FORMER *EN BANC* ERRED WHEN IT FAILED TO RECOGNIZE THAT THE GOVERNMENT DID NOT SUFFER ANY DAMAGE OR REVENUE LOSS SINCE ALL TARIFF DUTIES IMPOSABLE ON THE SUBJECT SHIPMENT WERE ALREADY PAID TO THE GOVERNMENT, SUCH THAT TO ALLOW RESPONDENT COMMISSIONER TO RECOVER THE ENTIRE VALUE OF THE SUBJECT SHIPMENT WOULD BE CONFISCATORY AND AMOUNT TO UNJUST ENRICHMENT ON THE PART OF THE GOVERNMENT.

III

THE CTA FORMER *EN BANC* ERRED WHEN IT CONSIDERED THE SUBJECT SHIPMENT AS IMPLIEDLY ABANDONED, DEPRIVING PETITIONER PSPC OF ITS RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW, CONSIDERING:

A. RESPONDENT COMMISSIONER DID NOT OBSERVE THE DUE NOTICE REQUIREMENT UNDER SECTION 1801 OF THE TCCP OR COMPLIED WITH THE RULES THAT BOC HAD PROMULGATED, WHICH DUE NOTICE IS MANDATORY IN THE ABSENCE OF FRAUD AS HELD IN THE CHEVRON CASE.

B. THE DUE NOTICE REQUIRED UNDER SECTION 1801 OF THE TCCP ACTUALLY REFERS TO THE NOTICE TO FILE ENTRY FOR IMPORTED ARTICLES AND NOT THE ARRIVAL THEREOF.

C. PETITIONER PSPC'S ADVANCE FILING OF ITS IED WHICH, BY LAW, ALREADY CONSTITUTES A VALID AND EFFECTIVE IMPORT ENTRY FORM, AND ITS CLEAR ACTUATIONS SHOWED AN INTENTION NOT TO ABANDON THE SUBJECT SHIPMENT, ESPECIALLY SINCE IT HAD ALREADY FULLY PAID THE TARIFF DUTY DUE ON THE SHIPMENT IN ADVANCE.

D. RESPONDENT COMMISSIONER DID NOT CONSIDER PETITIONER PSPC'S REASONABLE AND JUSTIFIABLE REASONS FOR THE SLIGHT DELAY IN FILING ITS IEIRD.

E. TO SUSTAIN THE CTA FORMER *EN BANC* IS TO TREAT PETITIONER PSPC WORSE THAN SMUGGLERS AND COMMON CRIMINALS, AS TO DEPRIVE IT OF ITS RIGHT TO EQUAL PROTECTION OF THE LAW.

IV

THE CTA [FORMER] *EN BANC* ERRED IN FAILING TO RECOGNIZE THAT THE IMPOSITION OF A NINE HUNDRED THIRTY-SIX MILLION EIGHT HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-THREE AND 90/100 PESOS (P936,889,883.90) PENALTY BY REASON OF IMPLIED ABANDONMENT AGAINST PETITIONER PSPC, DESPITE ITS FULL PAYMENT OF THE TARIFF DUTY DUE ON THE SHIPMENT AND THE JUSTIFIABLE SLIGHT DELAY IN THE LATTER'S SUBMISSION OF ITS IEIRD, IS IN VIOLATION OF INTERNATIONAL LAW UNDER THE REVISED KYOTO CONVENTION.

V

THE CTA [FORMER] *EN BANC* ERRED IN FAILING TO RECOGNIZE THAT THERE IS NO STATUTORY PROVISION EMPOWERING RESPONDENT COMMISSIONER TO SUBSTITUTE ITS CLAIMS FOR THE ABANDONED GOODS WITH THE VALUE THEREOF.

VI

THE CTA [FORMER] *EN BANC* GROSSLY MISAPPRECIATED THE FACTS AND MISAPPLIED THE RULING OF THE HONORABLE COURT IN THE *CHEVRON CASE* WHEN IT HELD THAT PRESCRIPTION IS NOT A DEFENSE AND THAT THE NOTICE REQUIREMENT UNDER SECTION 1801 OF THE TCCP AND THE BOC'S OWN RULES AND REGULATIONS DO NOT APPLY EVEN IN THE ABSENCE OF FRAUD. QUITE THE CONTRARY, THE *CHEVRON CASE* CLEARLY RECOGNIZED THAT THE PRESCRIPTIVE PERIOD OF THE FINALITY OF THE LIQUIDATION UNDER SECTION 1603 OF THE TCCP IS A DEFENSE IN THE

ABSENCE OF FRAUD AND THE NOTICE REQUIREMENT WAS SET ASIDE DUE TO THE FINDING OF FRAUD AGAINST CHEVRON. MOREOVER, UNLIKE IN THE *CHEVRON CASE* WHERE THE HONORABLE COURT FOUND CHEVRON TO HAVE BENEFITED FROM ITS DELAY AND WAS GUILTY OF FRAUD, THE QUESTIONED *DECISION* AND *RESOLUTION* BOTH DID NOT FIND FRAUD ON THE PART OF PETITIONER PRPC.[35]

Petitioner asseverates that: (a) in the absence of fraud, the right of respondent to claim against petitioner, assuming there is any, has already prescribed since an action involving payment of customs duties demanded after a period of one (1) year from the date of final payment of duties shall not succeed, relying on Section 1603 of the TCCP; (b) the alleged Memorandum dated 2 February 2001 issued by the Investigation and Prosecution Division (IPD) of the BOC, which served as the court *a quo*'s basis in finding fraud on the part of petitioner, was never presented, authenticated, marked, identified, nor formally offered in evidence; hence, inadmissible and cannot be the basis of any finding of fraud; (c) even if the Memorandum dated 2 February 2001 is legally admitted in evidence, it still does not constitute clear and convincing proof to establish any fraud on the part of petitioner since, unlike in the *Chevron case*, it was entitled to avail of the reduced three percent (3%) rate under R.A. No. 8180, which was already in effect as early as 16 April 1996; thus, petitioner did not gain any undue advantage or benefit from its justifiable delay in filing the Import Entry and Internal Revenue Declaration within the 30-day mandatory period; and (d) the evidence on record and the acts of petitioner [filing of Import Entry Declaration (IED) and paying advance duties] disclose honest and good faith on its part showing clear absence of any fraudulent intent to evade the payment of the proper customs duties and taxes due at the time of the entry of its imported crude oil in the Philippines.[36]

Petitioner further argues that the government suffered or lost nothing when petitioner filed its Import Entry and Internal Revenue Declaration thirteen (13) days beyond the period allowed by law, considering that the former did not lose any tax collection when petitioner had allegedly paid in advance the amount of ₱71,923,285.00 for the regular tariff duty of 10% then prevailing, notwithstanding its entitlement to the reduced 3% rate under RA No. 8180. Consequently, by ordering petitioner to pay for the entire dutiable value amounting to ₱936,899,883.90, the government shall be guilty of unjust enrichment, and such would result to deprivation of property on the part of petitioner without due process of law.[37]

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35 Id. at 43-45.
36 Id. at 55-62.
37 Id. at 63-64.

Moreover, it is petitioner's contention that the principles enunciated in the *Chevron case* were misapplied in the case at bench. It explained that the reason for such ruling establishing the "*ipso facto* abandonment" doctrine was because there was a finding of fraud on the part of Chevron, being the importer. The existence of fraud was a critical and essential fact in the disposition on the issues in the *Chevron case* that justified the goods to be deemed impliedly abandoned in favor of the government. Corollarily, in the absence of fraud, goods cannot be deemed impliedly abandoned and *ipso facto* owned by the government arising from a mere delay in the submission of the Import Entry and Internal Revenue Declaration, such as in the present case. In other words, petitioner is convinced that the provisions of Sections 1801 and 1802 cannot be applied blindly which may cause goods to be impliedly abandoned in favor of the government, without even recognizing the peculiar circumstances of the case and without allowing the importer (petitioner herein) to provide justifications for the delay in the submission of its Import Entry and Internal Revenue Declaration. Allegedly, both notices to the importer to file entry and for its failure to file an entry within the non-extendible period of 30 days are essential before a shipment can be considered impliedly abandoned. Otherwise, to do so would constitute violation of the basic substantial constitutional rights of petitioner.

Petitioner explains that, in issuing Customs Administrative Order (CAO) No. 5-93 dated 1 September 1993 and Customs Memorandum Order (CMO) No. 15-94 dated 29 April 1994, respondent even recognized the significance of the due notice requirement before any goods may be deemed impliedly abandoned articles. Such notice purportedly refers to notice to file entry, and not notice of arrival as mistakenly interpreted by the CTA Former *En Banc*. Thus, in the absence of such notice in the present case, there could have been no implied abandonment in favor of the government of the said imported crude oil by petitioner pursuant to Section 1801 of the TCCP.

Lastly, petitioner believes that affirmance of the ruling *a quo*, would be tantamount to a clear violation of international laws, *i.e.* the Revised Kyoto Convention, which generally prohibit the imposition of substantial penalties for errors when there is no fraud or gross negligence on the part of an importer. Consequently, such current and reasonable trend in the international and uniform application of customs rules and laws shows how unreasonable, unjust, confiscatory, iniquitous and incongruent the disposition made against petitioner in the instant case; hence, the very need to set aside the assailed Decision and Resolution of the CTA Former *En Banc* in C.T.A. EB No. 472, in order to prevent the creation of a legal precedent which contravenes State commitments.

Respondent, on the other hand, counters that petitioner's failure to file its Import Entry and Internal Revenue Declaration within the non-extendible period of 30 days was fatal to its cause of action. Resultantly, the subject imported crude oil is deemed abandoned in favor of the government by reason of such non-filing of the imported entries within said prescriptive period.[38]

Our Ruling

The submissions of the parties to this case bring to fore two timelines and the consequences of the lapse of the prescribed periods. Petitioner appears to be covered by Section 1801, in relation to Section 1301, which respectively states:

> Sec. 1801. *Abandonment, Kinds and Effects of.* – An imported article is deemed abandoned under any of the following circumstances:
>
> (a) When the owner, importer or consignee of the imported article expressly signifies in writing to the Collector of Customs his intentions 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, 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)
>
> 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.
>
> x x x x
>
> Sec. 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 the 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

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38 Id. at 1101-1147.

> and consent of the importer of violations against applicable provisions of this Code when the importation is found to be unlawful.

Tersely put, when an importer after due notice fails to file an Import Entry and Internal Revenue Declaration within an unextendible period of thirty (30) days from the discharge of the last package, the imported article is deemed abandoned in favor of the government.

Upon the other hand, respondent is covered in a manner likewise mandatory, by the provisions of Section 1603 which states that:

> Sec. 1603. Finality of Liquidation. – When articles have been entered and passed free of duty or final adjustment of duties made, with subsequent delivery, such entry and passage, free of duty or settlement of duties will, **after the expiration of one year**, from the date of the final payment of duties, in the absence of fraud or protest, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative. (Emphasis supplied)

We rule that in this case, Section 1603 is squarely applicable. The finality of liquidation which arises one (1) year after the date of the final payment of duties, which is in this case 23 May 1996, renders inoperable the provisions of Section 1801.

Discussion

At the outset, it bears emphasis that the determination of the issues presented in this case requires a comprehensive assessment of the pronouncements made in the case of *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*;[39] thus, we find it imperative to reproduce hereunder the points there considered which are germane to the controversy under review.

> **THE IMPORTATION WERE ABANDONED IN FAVOR OF THE GOVERNMENT**
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> **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**:

[39] Supra note 29.

Section 1801. Abandonment, Kinds and Effect of. –

x x x x

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.

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.

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;

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 x x x.
>
> **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. It would be error on our part to continue applying the old law despite the clear changes introduced by the amendment.[40] (Emphasis and underlining supplied)

Based on the foregoing, it appears that in the *Chevron case*, the Court simply applied the clear provision of Section 1801(b), in relation to Section 1301, of the TCCP, as amended, which categorically provides that mere failure on the part of the owner, importer, consignee or interested party, after due notice, to file an entry within a non-extendible period of 30 days from the date of discharge of the last package (shipment) from the vessel, would mean that such owner, importer, consignee or interested party is deemed to have abandoned said shipment. Consequently, abandonment of such shipment (imported article) constitutes renouncement of all his interests and property rights therein.

The rationale of strict compliance with the non-extendible period of 30 days within which import entries (IEIRDs) must be filed for imported articles are as follows: (a) to prevent considerable delay in the payment of duties and taxes; (b) to compel importers to file import entries and claim their importation as early as possible under the threat of having their importation declared as abandoned and forfeited in favor of the government; (c) to minimize the opportunity of graft; (d) to compel both the BOC and the importers to work for the early release of cargo, thus decongesting all ports of entry; (e) to facilitate the release of goods and thereby promoting trade and commerce; and (f) to minimize the pilferage of imported cargo at the ports of entry.[41] The aforesaid policy considerations were significant to justify a firm observance of the aforesaid prescriptive period.

It was observed that it is the law itself that considers an imported article abandoned for failure to file the corresponding Import Entry and Internal Revenue Declaration within the allotted time. No acts or omissions to establish intent to abandon is necessary to effectuate the clear provision of the law. Since Section 1801(b) does not provide any qualification as to what

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40 Id. at 725-727.

41 Id. at 720-721; Citing the congressional deliberations on House Bill No. 4502 which was enacted as R.A. No. 7651, amending the Tariff and Customs Code of the Philippines, including relevant portion of the Sponsorship Speech of Exequiel B. Javier, 22 March 1993.

may have caused such failure in filing said import entry within the prescriptive period in order to render the imported article abandoned, this Court shall likewise make no distinction and plainly apply the law as clearly stated. Hence, upon the lapse of the aforesaid non-extendible period of 30 days, without the required import entry filed by the importer within said period, its imported article is therefore deemed abandoned.

Moreover, Section 1802 of the same Code states to whom said abandoned imported articles belong as a consequence of such renouncement by the owner, importer, consignee or interested party. It 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.
>
> x x x x (Emphasis supplied)

In the *Chevron case*, we explained that the term *"ipso facto"* is defined as "by the very act itself" or "by mere act." Hence, there is no need for any affirmative act on the part of the government with respect to abandoned imported articles given that the law itself categorically provides that said articles shall *ipso facto* be deemed the property of the government. By using the term *"ipso facto"* in Section 1802 of the TCCP, as amended by R.A. No. 7651,[42] the legislature removed the need for abandonment proceedings and for any declaration that imported articles have been abandoned before ownership thereof can be effectively transferred to the government. In other words, ownership over the abandoned imported articles is transferred to the government by operation of law.

The rulings in Chevron was generously applied by CTA Former En Banc in the present case. Thus:

> **Petitioner Shell's failure to file the required entries, within the prescribed non-extendible period of thirty (30) days from the date of discharge of the last package from the carrying vessel, constitutes implied abandonment of its oil importation. This means, that from the precise moment that the non-extendible thirty-day period had lapsed, the abandoned shipment was deemed the property of the**

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42 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, which was approved on 4 June 1993. This amendatory law, particularly Section 1 of RA No. 7651, deleted the requirement under Section 1802 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.

> **government.** Therefore, when petitioner withdrew the oil shipment for consumption, it appropriated for itself properties which already belonged to the government. x x x
>
> Petitioner Shell's contention that the **belated filing of its import entries is justified due to the late arrival of its import documents, which are necessary for the proper computation of the import duties, cannot be sustained.**
>
> x x x x
>
> The [CTA Former *En Banc*] cannot also accept such excuses, **as the absence of supporting documents should not have prevented petitioner Shell from complying with the mandatory non-extendible period, since the law prescribes an extremely serious consequence for delayed filing.** If this kind of excuse was to be accepted, then the collection of customs duties would be at the mercy of importers, which our lawmakers try to avoid.
>
> For all the foregoing, we rule that the late filing of the IEIRDs alone, which constituted implied abandonment, makes petitioner Shell liable for the payment of the dutiable value of the imported crude oil. x x x[43] (Emphasis supplied)

Since it is undisputed that the Import Entry and Internal Revenue Declaration was belatedly filed by petitioner on 23 May 1996, or more than 30 days from the last day of discharge of its importation counted from 10 April 1996, the importation may be considered impliedly abandoned in favor of the government. Petitioner argues that before Section 1802 can be applied and the *ipso facto* provision invoked, the requirement of due notice to file entry and the determination of the intent of the importer are essential in order to consider the subject imported crude oil of petitioner impliedly abandoned in favor of the government. It further asserts that, in the *Chevron case*, it was conceded that as a general rule, due notice is indeed required before any imported article can be considered impliedly abandoned, but Chevron's non-entitlement to such prior notice was legally justified because of the finding of fraud established against it, rendering it impossible for the BOC to comply with the due notice requirement under the prevailing rules. Consequently, it is petitioner's conclusion that such finding of fraud is indispensable in order to waive the "due notice requirement," that would eventually consider the subject imported crude oil impliedly abandoned in favor of the government.

In Chevron, we observed that:

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43 *Rollo*, pp.149-151.

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:

x x x x

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.**

x x x x

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.

x x x x

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.**
>
> x x x x
>
> 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. (Emphasis supplied)
>
> x x x x

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**.[44] (Emphasis and underlining supplied)

Therefrom, it is without a doubt that the requirement of due notice contemplated under Section 1801(b) of the TCCP, as amended, refers to the notice to the owner, importer, consignee or interested party of the *arrival of its shipment* and *details thereof*. The legislative intent was clear in emphasizing the importance of said notice of arrival, which is intended solely to persons not considered as knowledgeable importers, or those who are not familiar with the governing rules and procedures in the release of importations. We as much as said that the due notice requirement under Section 1801(b), do not apply to *knowledgeable importers*, such as Chevron in the above-cited case, for having been considered as one of the regular, large-scale and multinational importers of oil and oil products, familiar with said rules and procedures (including the duty and obligation of filing the IEIRD within a non-extendible period of 30 days) and fully aware of the arrival of its shipment on its privately owned pier or wharf in the Port of Batangas. Applying Chevron, the decision assailed here said:

> **The due notice required under *Section 1301* is the notice of the arrival of the shipment**. In this case, pursuant to the Chevron case, notice to petitioner Shell is not required under the peculiar circumstances of the case. **Petitioner Shell, like Chevron, is a regular, large-scale and multinational importer of oil and oil products, who falls under the category of a knowledgeable importer, familiar with the governing rules and procedures in the release of importations.**
>
> More importantly, **petitioner Shell even admitted that it filed an application for Special Permit to Discharge and paid the corresponding advance duties on March 22, 1996 *(Exhibits "K" and "P")*, which undeniably proved knowledge on the part of petitioner Shell of the arrival of the shipment**. Likewise, upon arrival of the shipment, **they were unloaded from the carrying vessels docked at the wharf owned by petitioner Shell at Tabangao, Batangas City; thus, petitioner Shell was fully aware that their importation had already arrived.**[45] (Emphasis supplied)

The foregoing having been said, we must with equal concern, go to the other timeline which is provided for in Section 1603 of the TCCP, to wit:

> Sec. 1603. *Finality of Liquidation.* – When articles have been entered and passed free of duty or final adjustment of duties made, with subsequent delivery, such entry and passage free of duty or settlement of

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44 *Chevron Phils., Inc. v. Commissioner of the Bureau of Customs*, supra note 29 at 731-733.

45 *Rollo*, pp. 148-149.

> duties will, after the expiration of one year, from the date of the final payment of duties, in the absence of fraud or protest, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.

Petitioner insists that, in the absence of fraud, the right of respondent to claim against it has already prescribed considering that an action involving the entry and payment of customs duties involving imported articles demanded after a period of one (1) year from the date of final payment of duties, shall not succeed, pursuant to the clear provision of Section 1603. It therefore contends that even if the subject imported crude oil of petitioner is by law deemed abandoned by operation of law under Sections 1801(b), in relation to Section 1301, of the Code, respondent's right to claim abandonment had already lapsed since fraud is wanting in this case. On the other hand, respondent counters that since there was a factual finding of fraud committed by petitioner in the filing of its Import Entry and Internal Revenue Declaration beyond the 30-day period prescribed under Section 1301 of the TCCP, the 1-year prescriptive period under Section 1603 therefore does not apply.

At this point, it bears emphasis that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised.[46] The Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court[47] – and they carry even more weight when the CA affirms the factual findings of the trial court.[48] However, it is already a settled matter that, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; **(10) when the findings of fact are premised on the supposed absence of evidence** and contradicted by the evidence on record; and **(11) when the Court of Appeals manifestly**

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46 *Salcedo v. People*, 400 Phil. 1302, 1304 (2000).

47 *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, 472 Phil. 11, 22 (2004).

48 *Borromeo v. Sun*, 375 Phil. 595, 602 (1999).

overlooked certain relevant facts not disputed by the parties, **which, if properly considered, would justify a different conclusion.**[49]

Records of this case reveal that the CTA in Division in its 19 June 2008 Decision[50] made a pronouncement that there was indeed fraud committed by petitioner based on the factual finding contained in the Memorandum dated 2 February 2001 issued by Special Investigator II Domingo B. Almeda and Special Investigator III Nemesio C. Magno, Jr. of the CIIS-IPD of the BOC. Consequently, since such memorandum made such factual finding of fraud against petitioner, the court *a quo* ruled that prescription does not set in even if respondent's claim was made beyond the 1-year reglementary period.

Upon an assiduous review of the factual finding of fraud, we find petitioner's contention meritorious. Hence, the instant case falls among the exceptions to the general rule previously mentioned which would require this Court's judicial prerogative to review the court *a quo*'s findings of fact.

Generally, fraud has been defined as "the deliberate intention to cause damage or prejudice. It is voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission.[51] For fraud to exist, it must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right.[52] It is never presumed and the burden of proof to establish lies in the person making such allegation since every person is presumed to be in good faith.[53] To discharge this burden, fraud must be proven by clear and convincing evidence.[54] Also, fraud must be alleged and proven as a fact where the following requisites must concur: (a) the fraud must be established by evidence; and (b) the evidence of fraud must be clear and convincing, and not merely preponderant. Upon failure to establish these two (2) requisites, the presumption of good faith must prevail.

Section 3611(c) of the TCCP, as amended, defines the term fraud as the occurrence of a "material false statement or act in connection with the transaction which was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence." Again, such

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49 *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, supra note 47 at 22-23.
50 *Rollo*, pp. 341-353.
51 *International Corporate Bank v. Guenco*, 404 Phil. 353, 364 (2001).
52 *Transglobe International, Inc. v. Court of Appeals*, 361 Phil. 727, 739 (1999).
53 *Astroland Developers Inc. v. GSIS*, 481 Phil. 724, 748 (2004).
54 *Republic v. CTA*, 458 Phil. 758, 767 (2001).

factual finding of fraud should be established based on clear, convincing, and uncontroverted evidence.

Relevant thereto, in the landmark case of *Aznar v. Court of Tax Appeals*,[55] we explained the general concept of fraud as applied to tax cases in the following fashion:

> **The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right.** Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrong doing with the sole object of avoiding the tax. **It necessarily follows that a mere mistake cannot be considered as fraudulent intent, and if both petitioner and respondent Commissioner of Internal Revenue committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith.**[56] (Emphasis supplied)

In the case at bench, a perusal of the records reveals that there is neither any iota of evidence nor concrete proof offered and admitted to clearly establish that petitioner committed any fraudulent acts. The CTA in Division relied solely on the Memorandum dated 2 February 2001 issued by the CIIS-IPD of the BOC in ruling the existence of fraud committed by petitioner. However, there is no showing that such document was ever presented, identified, and testified to or offered in evidence by either party before the trial court.

Time and again, this Court has consistently declared that cases filed before the CTA are litigated *de novo*, party-litigants must prove *every minute aspect* of their cases.[57] Section 8 of R.A. No. 1125,[58] as amended by R.A. No. 9282,[59] categorically described the CTA as a court of record. Indubitably, no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence

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55 157 Phil. 510 (1974).

56 Id. at 535.

57 *Dizon v. CTA*, 576 Phil. 111, 128 (2008); and *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, 547 Phil. 332, 339 (2007); and *Commissioner of Internal Revenue v. Manila Mining Corp.*, 505 Phil. 650, 664 (2005).

58 An Act Creating The Court Of Tax Appeals.

59 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes.

require that such documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Rules of Court which reads:

> **Section 34.** *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

From the foregoing provision, it is clear that for evidence to be considered by the court, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles*,[60] We had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.[61]

The Rule on this matter is patent that even documents which are identified and marked as exhibits cannot be considered into evidence when the same have not been formally offered as part of the evidence, but more so if the same were not identified and marked as exhibits, such as in the present case. An assay of the records reveals that the subject Memorandum dated 2 February 2001 was neither identified nor offered in evidence by respondent during the entire proceedings before the CTA in Division. Consequently, this is fatal to respondent's cause in establishing the existence of fraud committed by petitioner since the burden of proof to establish the same lies with the former alone.

As a matter of fact, even if the aforesaid documentary evidence was included as part of the BOC Records submitted before the CTA in compliance with a lawful order of the court,[62] this does not permit the trial court to consider the same in view of the fact that the Rules prohibit it. The reasoning forwarded by the CTA in Division in its Resolution dated 24 February 2009, that the apparent purpose of transmittal of the records is to

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60 264 Phil. 753, 759 (1990).

61 *Mato v. CA*, 320 Phil. 344, 349 (1995).

62 Section 5(b), Rule 6 of the Revised Rules of the Court of Tax Appeals requires, among others, the Commissioner of Customs, within ten days after his answer, to certify and forward to the court all the records of the case in their possession. Failure to transmit the records within the time prescribed herein or within the time allowed by law by the court may constitute indirect contempt of court.

enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. Unless any of the party formally offered in evidence said Memorandum, and accordingly, admitted by the court *a quo*, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it.

By analogy, in *Dizon v. CTA*,[63] this Court underscored the importance of a formal offer of evidence and the corresponding admission thereafter. We quote:

> While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate. **The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause.** Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR.
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> Per the records of this case, the BIR was directed to present its evidence in the hearing of February 21, 1996, but BIR's counsel failed to appear. The CTA denied petitioner's motion to consider BIR's presentation of evidence as waived, with a warning to BIR that such presentation would be considered waived if BIR's evidence would not be presented at the next hearing. Again, in the hearing of March 20, 1996, BIR's counsel failed to appear. Thus, in its Resolution dated March 21, 1996, the CTA considered the BIR to have waived presentation of its evidence. In the same Resolution, the parties were directed to file their respective memorandum. Petitioner complied but BIR failed to do so. In all of these proceedings, BIR was duly notified. Hence, in this case, we are constrained to apply our ruling in *Heirs of Pedro Pasag v. Parocha*:
>
> > **A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.**

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63 Supra note 57 at 131-132 citing *Heirs of Pasag v. Parocha*, 550 Phil. 571, 578-579 (2007).

> Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that **the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice**."
>
> Applying the aforementioned principle in this case, we find that the trial court had reasonable ground to consider that petitioners had waived their right to make a formal offer of documentary or object evidence. Despite several extensions of time to make their formal offer, petitioners failed to comply with their commitment and allowed almost five months to lapse before finally submitting it. **Petitioners' failure to comply with the rule on admissibility of evidence is anathema to the efficient, effective, and expeditious dispensation of justice.** (Emphasis and underlining supplied)

Clearly therefore, evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into account on appeal. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected.

Moreover, even if not submitted as a contention herein, We find it apropos to rule that the CTA likewise cannot *motu proprio* justify the existence of fraud committed by petitioner by applying the rules on judicial notice.

Judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them.[64] Under the Rules of Court, judicial notice may either be mandatory or discretionary. Pertinent portions of Rule 129 of the Rules of Court provide as follows:

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64 *People v. Tundag*, 396 Phil. 873, 887 (2000).

RULE 129

What Need Not Be Proved

Section 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

Section 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Section 3. *Judicial notice, when hearing necessary.* — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

x x x x

In relation thereto, it has been held that the doctrine of judicial notice rests on the wisdom and discretion of the courts; however, the power to take judicial notice is to be exercised by the courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt upon the subject should be promptly resolved in the negative.[65]

As a general rule, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge.[66] However, this rule is subject to the exception that **in the absence of objection** and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of the case filed in its archives as read into the records of a case pending before it, when **with the knowledge of the opposing party**, reference is made to it, by name and number or in

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65 *Rep. of the Phils. v. CA*, 194 Phil. 476, 495 (1981).

66 *Tabuena v. CA*, 274 Phil. 51, 57 (1991).

some other manner by which it is sufficiently designated.[67] Thus, for said exception to apply, the party concerned must be given an opportunity to object before the court could take judicial notice of any record pertaining to other cases pending before it.

Such being the case, it would also be an error for the CTA in Division to even take judicial notice of the subject Memorandum being merely a part of the BOC Records submitted before the court *a quo*, without the same being identified by a witness, offered in and admitted as evidence, and effectively, depriving petitioner, first and foremost, an opportunity to object thereto. Hence, the subject Memorandum should not have been considered by the CTA in Division in its disposition.

It is well-settled that procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice.[68]

The claim of respondent against petitioner has already prescribed

Since we have already laid to rest the question on whether or not there was fraud committed by petitioner, the last issue for Our resolution is whether respondent's claim against petitioner has already prescribed.

This Court rules in the affirmative.

There being no evidence to prove that petitioner committed fraud in belatedly filing its Import Entry and Internal Revenue Declaration within the 30-day period prescribed under Section 1301 of the TCCP, as amended, respondent's rights to question the propriety thereof and to collect the amount of the alleged deficiency customs duties, more so the entire value of the subject shipment, have already prescribed. Simply put, in the absence of fraud, the entry and corresponding payment of duties made by petitioner becomes final and conclusive upon all parties after one (1) year from the

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67 Id. citing *U.S. v. Claveria*, 29 Phil. 527, 532 (1915).

68 *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, 628 Phil. 430, 451 (2010).

date of the payment of duties in accordance with Section 1603 of the TCCP, as amended:

> 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 as well, 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. (Emphasis and underscoring supplied)

The above provision speaks of *entry and passage free of duty or settlements of duties*. Generally, in customs law, the term "entry" has a triple meaning, to wit: (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.[69] As explained in the *Chevron case*, it specifically refers to the filing and acceptance of the Import Entry and Internal Revenue Declaration of the imported article. Simply put, the entry of imported goods at the custom house consists in submitting them to the inspection of the revenue officers, together with a statement or description of such goods, and the original invoices of the same, for the purpose of estimating the duties to be paid thereon.[70] The term "duty" used therein denotes a tax or impost due to the government upon the importation or exportation of goods. It means that the duties on imports signify not merely a duty on the act of importation, but a duty on the thing imported. It is not confined to a duty levied while the article is entering the country, but extends to a duty levied after it has entered the country.[71]

Based on the foregoing definitions, it is commonsensical that the finality of liquidation referred to under Section 1603 covers the propriety of the submission and acceptance of the Import Entry and Internal Revenue Declaration covering the imported articles being brought in the country for the sole purpose of determining whether it is subject to tax or not; and if it is, whether the computation of the tax or impost to be paid to the government was properly made. These shall include, among others, the declarations and statements contained in the entry, made under oath and under the penalties of falsification or perjury that such declarations and statements contained therein are true and correct, which shall constitute *prima facie* evidence of

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69 *Rodriguez v. CA*, 318 Phil. 313, 325 (1995).
70 Black's Law Dictionary, 6th Edition, p. 369.
71 Id. at 349.

knowledge and consent of the importer of violation against applicable provisions of the TCCP when the importation is found to be unlawful.[72]

Indubitably, the matters which become final and conclusive against all parties include the timeliness of filing the import entry within the period prescribed by law, the declarations and statements contained therein, and the payment or non-payment of customs duties covering the imported articles by the owner, importer, consignee or interested party. Since the primordial issue presented before us focuses on petitioner's non-compliance in filing its Import Entry and Internal Revenue Declaration within a non-extendible period of 30 days from the date of discharge of the last package from the vessel, respondent may only look into it within a limited period of one (1) year in accordance with the above-quoted provision.

In the case at bench, it is undisputed that petitioner filed its IEIRD and paid the remaining customs duties due on the subject shipment only on 23 May 1996. Yet, it was only on 1 August 2000, or more than four (4) years later, that petitioner received a demand letter from the District Collector of Batangas for the alleged unpaid duties covering the said shipment. Thereafter, on 29 October 2001, or after more than five (5) years, petitioner received another demand letter from respondent seeking to collect for the entire dutiable value of the same shipment amounting to P936,899,855.90.

Consequently, applying the foregoing provision and considering that we have determined already that there is no factual finding of fraud established herein, the liquidation of petitioner's imported crude oil shipment became final and conclusive on 24 May 1997, or exactly upon the lapse of the 1-year prescriptive period from the date of payment of final duties. As such, any action questioning the propriety of the entry and settlement of duties pertaining to such shipment initiated beyond said date is therefore barred by prescription.

Since time immemorial, this Court has consistently recognized and applied the statute of limitations to preclude the Government from exercising its power to assess and collect taxes beyond the prescribed period, and we intend to abide by our rulings on prescription and to strictly apply the same in the case of petitioner; otherwise, both the procedural and substantive rights of petitioner would be violated. After all, prescription is a substantive defense that may be invoked to prevent stale claims from being resurrected causing inconvenience and uncertainty to a person who has long

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72 See Section 1301 of the TCCP.

enjoyed the exercise. Thus, symptomatic of the magnitude of the concept of prescription, this Court has elucidated that:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because **after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents.** The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend (sic) the approval of the law.[73] *(Emphasis supplied)*

Basic is the rule that provisions of the law should be read in relation to other provisions therein. A statute must be interpreted to give it efficient operation and effect as a whole avoiding the nullification of cognate provisions. Statutes are read in a manner that makes it wholly operative and effective, consistent with the legal maxim *ut res magis valeat quam pereat.*

This maxim applied, we read Sections 1301, 1801, and 1802, together with Section 1603 of the TCCP. Thus, should there be failure on the part of the owner, importer, consignee or interested party, after due notice of the arrival of its shipment (except in cases of *knowledgeable owners or importers*), to file an entry within the non-extendible period of 30 days from the date of discharge of the last package (shipment) from the vessel, such owner, importer, consignee or interested party is deemed to have abandoned said shipment in favor of the government. As imperative, however, is the strict compliance with Section 1603 of the TCCP, which should be read as we have ruled. Any action or claim questioning the propriety of the entry and settlement of duties pertaining to such shipment made beyond the 1-year prescriptive period from the date of payment of final duties, is barred by prescription. In the present case, the failure on the part of respondent to timely question the propriety of the entry and settlement of duties by petitioner involving the subject shipment, renders such entry and settlement of duties final and conclusive against both parties. Hence, respondent cannot any longer have any claim from petitioner. Sections 1301, 1801, and

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[73] *Rep. of the Philippines v. Ablaza*, 108 Phil. 1105, 1108 (1960).

1802 of the TCCP have been rendered inoperable by reason of the lapse of the period stated in Section 1603 of the same Code.

Indeed, if the prescriptive period of one year specified in Section 1603 of the TCCP is not applied against the respondent, the reality that the shipment has been unloaded from the carrying vessels to petitioner's oil tanks and that import duty in the amount of ₱11,231,081.00 has been paid would be obliterated by the application of the principle of deemed abandonment four years after the occurrence of the facts of possession and payment, as a consequence of which application, the petitioner would be made to pay the government the entire value of the shipment it had as vendee of the shipper already paid.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated 13 May 2010 and Resolution dated 22 February 2011 of the Court of Tax Appeals Former *En Banc* in C.T.A. EB No. 472 are hereby **REVERSED** and **SET ASIDE** on the ground of prescription.

No costs.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

Plz. see dissenting opinion

DIOSDADO M. PERALTA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice I join the dissent of J. Peralta

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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 had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

MARIA LOURDES P. A. SERENO
Chief Justice