THIRD DIVISION

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

Promulgated:

December 5, 2016

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CONCURRING OPINION

VELASCO, JR., *J.*:

I register my concurrence with the *ponencia*.

The Latin maxim *stare decisis et non quieta movere* means stand by the thing and do not disturb the calm—a bar from any attempt at relitigating the same issues. It requires that high courts must follow, as a matter of sound policy, their own precedents, or respect settled jurisprudence absent compelling reason to do otherwise.[1] As a recognized exception, the salutary doctrine cannot be invoked when the facts and circumstances in the succeeding case have so changed as to have robbed the old rule of significant application or justification.

There is truth to the claim that the instant case bears striking resemblance to that of *Chevron Philippines v. Commissioner of the Bureau of Customs (Chevron)*.[2] As observed by Associate Justice Diosdado M. Peralta (Justice Peralta) in his dissent:[3]

> x x x As in *Chevron,* the imported crude oil subject of the present case arrived n the Philippines and was discharged from the carrying vessels prior to the effectivity of RA 8180. The import entries in both cases were filed beyond the 30-day period required under Section 1301 of the [Tariff and Customs Code of the Philippines]. In fact, it is on the bases of the facts obtaining in these importations of petitioner and Chevron (then known as Caltex Phils., Inc.) that only one civil suit for collection of the dutiable value of the imported articles was filed by the [Bureau of Customs] against these two corporations as defendants. It is from this factual backdrop and the ensuing demand by the [Bureau of Customs] to collect the dutiable value of the importations that the case of *Chevron* reached this Court and was ultimately decided in favor of the [Bureau of Customs]. x x x

Notwithstanding these glaring similarities, it cannot hastily be concluded that *Chevron* is on all fours with the case at bar; **the two cases are diametrically opposed insofar as the issue of fraud on the part of the**

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[1] *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009, 582 SCRA 694.
[2] G.R. No. 178759, August 11, 2008, 561 SCRA 710.
[3] Dissenting Opinion, p. 4.

importer is concerned. While the Court's ruling in *Chevron* was that the existence of fraud therein was sufficiently established, no clear and convincing evidence was presented herein to justify arriving at the same conclusion.

Whether or not petitioner Pilipinas Shell Petroleum Corporation (Pilipinas Shell) defrauded the Bureau of Customs (BOC) becomes pivotal in this case because of Sec. 1603 of the Tariff and Customs Code (TCC), to wit:

> 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. (emphasis added)

Pursuant to the above-quoted provision, the attendance of fraud would remove the case from the ambit of the statute of limitations, and would consequently allow the government to exercise its power to assess and collect duties even beyond the one-year prescriptive period, rendering it virtually imprescriptible.

Exhaustively discussed by the *ponencia* was that no scintilla of proof was ever offered in evidence by respondent Commissioner of Customs to reinforce the claim that Pilipinas Shell acted in bad faith, then *a fortiori*, in a fraudulent manner, in its settlement of duties on its imported crude oil. The February 2, 2001 Memorandum on which the Court of Tax Appeals (CTA), both in division and *en banc*, chiefly anchored the finding of fraudulent intent was **never formally offered,** but was instead merely included in the records of the proceedings before the Bureau of Customs.

Respondent was remiss in presenting this crucial piece of evidence in the *de novo* proceeding before the CTA. Much has already been said by the *ponencia* about the adverse effect of the procedural lapse on the admissibility of the Memorandum and on its probative value. If I may inject: regardless of whether the document adverted to was marked during pre-trial, or was otherwise identified during trial proper, it cannot be accorded any evidentiary weight in finally resolving the case. As held in *Heirs of Pasag v. Sps. Parocha*:[4]

> x x x Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence **cannot in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value.** It must be stressed that there is a significant distinction between

[4] G.R. No. 155483, April 27, 2007, 522 SCRA 410.

> identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. **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. It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.** (emphasis added)

It is this lack of proof of fraud that substantially alters the terrain of the case, thereby precluding the applicability of the doctrine of *stare decisis*. Though the circumstance appears to be merely tangential, it is nevertheless the critical element in resolving the issue on prescription. Absent fraud, the government, through the BOC, is under legal compulsion to assess and collect customs duties within a strict one-year period. As brought to fore by the *ponencia*, respondent was regrettably remiss in complying with the statutory mandate of Sec. 1603 of the TCC:[5]

> It is undisputed that petitioner filed its [Import Entry and Internal Revenue Declaration] and paid the remaining customs duties 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. (emphasis added)

Upon expiration of the prescriptive period, respondent was barred from further collecting from petitioner the dutiable value of its imported crude oil. The hands of the Court are then constrained. There is no other course of action for us to take other than to grant the instant petition.

Notably, Justice Peralta never questioned the finding of the *ponencia* as regards respondent's procedural lapse. However, it is his postulation that the presence or even the absence of fraud is irrelevant since Sec. 1603 of the TCC does not find application in cases wherein the government exercises its right over abandoned imported articles, rather than its power to assess and collect taxes.

Unfortunately, I cannot join the dissent. I am perplexed at the contradiction of how the argument is raised in the same breath as the invocation of *stare decisis*. The irony lies in the discussion in *Chevron* of the very same issue of prescription and the coverage of Sec. 1603.

Aside from the presence or absence of fraud, it is admitted that there is significant identity as to the factual milieu of *Chevron* and the case at bar. Both are concerned with the treatment of abandoned imported articles, and

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[5] Decision, p. 30.

the collection by the Commissioner of Customs of the dutiable value pertaining thereto. In *Chevron*, we have categorically ruled that *"due to the presence of fraud, the prescriptive period of the finality of liquidation under Section 1603 was inapplicable."* The converse should, therefore, likewise hold true—in the absence of fraud, the one-year prescriptive period under Sec. 1603 shall find application. Hence, even if *stare decisis* is then to be applied, it could only operate to sustain the dismissal of the case on the ground of prescription. Only then could the ruling of the *ponencia* not possibly be considered as a deviation from a settled norm.

PRESBITERO J. VELASCO, JR.
Associate Justice

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