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SPECIAL THIRD DIVISION

[G.R. No. 195876, June 19, 2017]

PILIPINAS SHELL PETROLEUM CORPORATION, PETITIONER, V. COMMISSIONER OF CUSTOMS, RESPONDENT.

RESOLUTION

VELASCO JR., J.:

Acting on the Omnibus Motion (For Reconsideration and Referral to the Court En banc) dated January 20, 2017 filed by public respondent Commissioner of Customs, the Court **DENIES** the same for lack of merit. The arguments raised by respondent in this pending incident are the very same arguments raised in the petition, which have already been evaluated, passed upon, and considered in the assailed December 5, 2016 Decision. Ergo, the Court rejects these arguments on the same grounds discussed in the challenged Decision, and denies, as a matter of course, the pending motion.

Unlike in Chevron, petitioner herein is not guilty of fraud

The Omnibus Motion is anchored primarily on the alleged applicability of *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*[1] (*Chevron*) to the case at bar. However, the Court desisted from applying the doctrine laid down in *Chevron* considering that the facts and circumstances therein are not in all fours with those obtaining in the instant case. Thus, Chevron is not a precedent to the case at bar.

A "precedent" is defined as a judicial decision that serves as a rule for future determination in similar or substantially similar cases. Thus, the facts and circumstances between the jurisprudence relied upon and the pending controversy should not diverge on material points. But as clearly explained in the assailed December 5, 2016 Decision, the main difference between *Chevron* and the case at bar lies in the attendance of fraud.

In *Chevron*, evidence on record established that Chevron committed fraud in its dealings. On the other hand, proof that petitioner Pilipinas Shell Petroleum Corporation (Pilipinas Shell) was just as guilty was clearly wanting. Simply, there was no finding of fraud on the part of petitioner in the case at bar. Such circumstance is too significant that it renders *Chevron* indubitably different from and cannot, therefore, serve as the jurisprudential foundation of the case at bar.

In his dissent, Associate Justice Diosdado M. Peralta (Justice Peralta) claims that fraud was committed by Pilipinas Shell when it allegedly deliberately incurred delay in filing its Import Entry and Internal Revenue Declaration in order to avail of the reduced tariff duty on oil importations, from ten percent (10%) to three percent (3%), upon the effectivity of Republic Act No. 8180 (RA 8180), otherwise known as the Oil Deregulation Law. Justice Peralta cites the February 2, 2011 Memorandum to support the allegation of fraud, but as exhaustively discussed in Our December 5,

2016 Decision, **the document was never formally offered as evidence before the Court of Tax Appeals, and is, therefore, bereft of evidentiary value. Worse, it was not even presented during trial and no witness identified the same.**

What value can the Court then accord to the document? The Court finds its answer in *Heirs of Pasag v. Sps. Parocha*,[2] which teaches that:

> 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 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)

Resultantly, no scintilla of proof was ever offered in evidence by respondent Commissioner of Customs to substantiate the claim that Pilipinas Shell acted in a fraudulent manner. **At best, the allegation of fraud on the part of Pilipinas Shell is mere conjecture and purely speculative.** Settled is the rule that a court cannot rely on speculations, conjectures or guesswork, but must depend upon competent proof and on the basis of the best evidence obtainable under the circumstances. We emphasize that litigations cannot be properly resolved by suppositions, deductions, or even presumptions, with no basis in evidence, for the truth must have to be determined by the hard rules of admissibility and proof.[3]

The absence of fraud and its effects on the one-year prescriptive period, and on the due notice requirement prior to *ipso facto* abandonment

As extensively discussed in the assailed Decision, whether or not petitioner Pilipinas Shell defrauded the public respondent becomes pivotal because of Section 1603 of the Tariff and Customs Code of the Philippines (TCC), which reads:

> 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.[4]

In the case at bar, petitioner Pilipinas Shell filed its Import Entry and Internal Revenue Declaration (IEIRD) and paid the import duty of its shipments in the amount of P11,231,081 on May 23, 1996. However, **it only received a demand letter from public respondent on July 27, 2000, or more than four (4) years later.** By this time, the one-year prescriptive period had already elapsed, and the government had already been barred from collecting the deficiency in petitioner's import duties for the covered shipment of oil.

In an attempt to remove the instant case from the purview of the provision, Justice Peralta and the respondent claim that the government is no longer collecting tariff duties. Rather, it is exercising its ownership right over the shipments, which were allegedly deemed abandoned by petitioner because of the latter's failure to timely file the IEIRD. It is their postulation then that Sec. 1603 cannot find application in the case at bar.

We respectfully disagree.

The absence of fraud not only allows the finality of the liquidations, it also calls for the strict observance of the requirements for the doctrine of *ipso facto* abandonment to apply. Sec. 1801 of the TCC pertinently provides:

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

As expressly provided in Sec. 1801(b) of the TCC, **the failure to file the IEIRD within 30 days from entry is not the only requirement for the doctrine of *ipso facto* abandonment to apply**. The law categorically requires that this be preceded by due notice demanding compliance.

To recapitulate, the notice in this case was only served upon petitioner four (4) years after it has already filed its IEIRD. Under this circumstance, the Court cannot rule that due notice was given, for when public respondent served the notice demanding payment from petitioner, it no longer had the right to do so. By that time, the prescriptive period for liquidation had already elapsed, and the assessment against petitioner's shipment had already become final and conclusive. Consequently, Sec. 1801(b) failed to operate in favor of the government for failure to demand payment for the discrepancy prior to the finality of the liquidation. The government cannot deem the imported articles as abandoned without due notice.

Public respondent cannot harp on the *Chevron* ruling to excuse compliance from the due notice requirement before the imported articles can be deemed abandoned, for to do so would only downplay the Court's finding anent the non-attendance of fraud. To be clear, the element of fraud in *Chevron* was a key ingredient on why notice was deemed unnecessary:[5]

> **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 DOC'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.** (emphasis added)

Hence, it does not suffice that petitioner is a multinational, large scale importer presumed to be familiar with importation rules and procedures for the *ipso facto* abandonment doctrine to apply. **Under the peculiar facts and circumstances** of *Chevron*, **the existence of fraud was the primary element established to warrant the application of the doctrine.** Without this element, *Chevron* cannot be treated at par with the case at bar. The statutorily required due notice should still have been timely served upon petitioner before the imported oil shipments could have been deemed abandoned.

Under public respondent's Customs Memorandum Order No. (CMO) 15-94, otherwise known as the Revised Guidelines on Abandonment in force at that time, due notice is served upon the importer through the following measures:

> SUBJECT: REVISED GUIDELINES ON ABANDONMENT
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> x x x x
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> B. ADMINISTRATIVE PROVISIONS
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> x x x x
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> B.2 Implied abandonment occurs when:
>
> 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.

x x x x

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.

x x x x

C. OPERATIONAL PROVISIONS

x x x x

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**