

## SECOND DIVISION

[ G.R. NO. 172051, July 27, 2007 ]

**AGFHA INCORPORATED, PETITIONER, VS. HON. COURT OF TAX APPEALS AND COMMISSIONER OF CUSTOMS, RESPONDENTS.**

[G.R. NO. 173813]

**AGFHA INCORPORATED, PETITIONER, VS. HON. COURT OF TAX APPEALS (EN BANC) AND COMMISSIONER OF CUSTOMS, RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

On December 12, 1992, a shipment of bales of "text grey cloth" arrived at the Manila International Container Port. The shipment was later placed under a Hold Order, following which forfeiture proceedings were taken for alleged violation of Section 2530 (f) and (1) (3-5) of the Tariff and Customs Code.

Agfha Incorporated (petitioner), claiming to be the lawful owner of the shipment, filed a motion for intervention.

By Decision dated September 5, 1994, the District Collector of Customs ordered the forfeiture of the shipment in favor of the government, drawing petitioner to lodge an appeal to the Commissioner of Customs (respondent) who, however, denied the same.

Petitioner thereupon appealed to the Court of Tax Appeals (CTA) which, by Decision dated November 4, 1996, ruled in its favor. Thus the CTA disposed:

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby GRANTED. Accordingly, the decision of the respondent in Customs Case No. 94-017, dated August 25, 1995, affirming the decision of the MICP Collector, dated September 5, 1994, which decreed the forfeiture of the subject shipments in favor of the government, is hereby REVERSED and SET ASIDE. Respondent is hereby ORDERED to effect the immediate RELEASE of the subject shipment goods in favor of the petitioner. No costs.<sup>[1]</sup> (Underscoring supplied)

Respondent appealed to the Court of Appeals and then to this Court. In both instances, the decision of the CTA was affirmed. This Court's Decision of October 2, 2001 attained finality on February 5, 2002.<sup>[2]</sup>

On October 16, 2000, the Second Division of the CTA issued a writ of execution<sup>[3]</sup> directing respondent to effect the immediate release of the shipment to petitioner.

The writ was not implemented, however.

Petitioner thus filed before the CTA a motion<sup>[4]</sup> for respondent to show cause why he should not be punished for contempt for defying the writ of execution.

In his Explanation with Motion for Clarification,<sup>[5]</sup> respondent sought guidance from the CTA since the writ of execution could no longer be carried out due to the "loss" of the shipment.

On April 14, 2004, petitioner filed before the CTA a motion to set case for hearing<sup>[6]</sup> to determine (1) whether petitioner's shipment was actually lost, and if so, the cause and/or circumstances attendant thereto; and (2) the amount respondent should pay petitioner should the shipment be found to have been actually lost.<sup>[7]</sup>

By Resolution<sup>[8]</sup> of May 17, 2005, the CTA found respondent liable for the loss of the shipment and ordered him to pay US\$160,348.08. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, INC. for the value of the subject shipment in the amount of ONE HUNDRED SIXTY THOUSAND THREE HUNDRED FORTY EIGHT AND 08/100 US DOLLARS (US\$160,348.08). The Bureau of Custom's liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.

The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.

SO ORDERED.<sup>[9]</sup>

Both parties moved for partial reconsideration of the above resolution.

By Resolution<sup>[10]</sup> of October 18, 2005, the CTA modified its May 17, 2005 resolution, and ordered that the taxes and duties on the shipment be deducted from the amount recoverable by petitioner, *viz*:

WHEREFORE, premises considered, respondent Commissioner of Customs' "Motion For Partial Reconsideration" is hereby PARTIALLY GRANTED. The Resolution dated May 17, 2005 is hereby MODIFIED but only insofar as the Court did not impose the payment of the proper duties and taxes on the subject shipment. Accordingly, the dispositive portion of Our Resolution, dated May 17, 2005, is hereby MODIFIED to read as follows:

WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, Inc. for the value of the subject shipment in the amount of ONE HUNDRED SIXTY

THOUSAND THREE HUNDRED FORTY EIGHT and 08/100 US Dollars (US\$160,348.08), subject, however, to the payment of the prescribed taxes and duties, at the time of the importation. The Bureau of Customs' liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.

The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.

SO ORDERED.

Petitioner AGFHA, Inc.'s "Motion For Partial Reconsideration" is hereby DENIED for lack of merit.

SO OREDERED.<sup>[11]</sup>

Petitioner filed a motion for partial reconsideration<sup>[12]</sup> of the October 18, 2005 Resolution which was denied by the CTA in its Resolution<sup>[13]</sup> dated February 3, 2006. Petitioner thereupon filed before this Court a petition for certiorari, docketed as G.R. No. 172051, alleging that:

THE CTA COMMITTED MANIFEST ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK/EXCESS OF JURSIDICTION:

I

WHEN IT ORDERED PETITIONER TO PAY THE TAXES AND DUTIES ON ITS SHIPMENT WHICH PRIVATE RESPONDENT'S OFFICE ITSELF LOST THROUGH ITS OWN FAULT AND NEGLIGENCE;

II

WHEN IT REFUSED TO EXPUNGE PRIVATE RESPONDENT'S MOTION FOR PARTIAL RECONSIDERATION DATED 09 JUNE 2005 (Annex "Q", HEREOF) FOR NON-COMPLIANCE WITH SECTION 11, RULE 13 AND SECTIONS 4 AND 6, RULE 15 OF THE 1997 RULES OF CIVIL PROCEDURE; AND

III

IN RULING THAT THE 12% INTEREST ON THE VALUE OF PETITIONER'S LOST SHIPMENT, IMPOSED BY WAY OF DAMAGES, SHOULD BE COMPUTED FROM THE FINALITY OF

ITS RESOLUTION DATED 17 MAY 2005 AND NOT FROM THE TIME THE SAID SHIPMENT WERE LOST.<sup>[14]</sup>

Meanwhile, respondent filed with the CTA en banc a petition for review<sup>[15]</sup> of the CTA October 18, 2005 Resolution, faulting the Second Division of the CTA in holding that:

A. RESPONDENT IS ENTITLED TO BE PAID ONE HUNDRED SIXTY THOUSAND THREE HUNDRED FORTY EIGHT AND 08/100 US DOLLARS (US\$160,348.08) PAYABLE IN PHILIPPINE CURRENCY, TO BE COMPUTED AT THE EXCHANGE RATE PREVAILING AT THE TIME OF ACTUAL PAYMENT.

B. THE PAYMENT OF RESPONDENT'S CLAIMS SHALL BE TAKEN FROM THE SALE OR SALES OF THE GOODS OR PROPERTIES WHICH WERE SEIZED OR FORFEITED BY THE BUREAU OF CUSTOMS IN OTHER CASES.<sup>[16]</sup>

Petitioner, instead of filing its Comment to the petition for review, filed a motion to dismiss,<sup>[17]</sup> arguing that a petition for review is not the proper remedy to challenge interlocutory orders and/or orders of execution.

By Resolution<sup>[18]</sup> of April 24, 2006, the CTA en banc ruled that petitioner's motion to dismiss is an unauthorized pleading and was thus ordered expunged from the records. Petitioner filed a motion for reconsideration,<sup>[19]</sup> but it was denied by Resolution<sup>[20]</sup> of June 14, 2006, drawing petitioner to file a petition for certiorari before this Court, docketed as **G.R. No. 173813**, claiming that:

THE CTA EN BANC COMMITTED MANIFEST ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK/EXCESS OF JURISDICTION WHEN IT ENTERTAINED PUBLIC RESPONDENT'S APPEAL (Petition for Review) OVER AN ORDER OF EXECUTION.<sup>[21]</sup>

In the interest of speedy and orderly administration of justice and to avoid conflicting decisions or resolutions, this Court resolved to consolidate G.R. No. 173813 with **G.R. No. 172051**.<sup>[22]</sup>

On the procedural issue on the appropriateness of the remedy taken by the parties to assail the CTA October 18, 2005 Resolution:

Petitioner contends that the assailed resolution is an order of execution, hence, under Rule 41, Section 1 of the Rules of Court, to wit:

SECTION 1. Subject of Appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

X X X X

(f) An order of execution;

X X X X