

## THIRD DIVISION

[ G.R. No. 104781, July 10, 1998 ]

**CALTEX (PHILIPPINES), INC., PETITIONER, VS. COURT OF APPEALS AND COMMISSIONER OF CUSTOMS, RESPONDENTS.**

### DECISION

**ROMERO, J.:**

Caltex, a corporation engaged in the oil industry, imported on various dates in 1982 light/medium mix special oil and heavy crude oil for which it was assessed the following ad valorem duties by the Collector of Customs:

1. P 97,697.143 - for the importation which arrived on April 10, 1982
2. P119,572.319 - for the importation which arrived on June 7, 1982
3. P 60,769.00 - for the importation which arrived on July 19, 1982

The basis of the assessments was a memorandum dated January 26, 1971, issued by then Acting Commissioner of Customs which provided that the duties and taxes in the importation of crude oil shall be based on the gross actual receipt without deducting the basic sediment and water (BSW). The full text of the memorandum<sup>[1]</sup> reads as follows:

"The Collector of Customs  
Port of Manila  
Port of Batangas  
Subport of Limay, Bataan

Effective February 1, 1971, Customs duties and taxes on importation of crude oil shall be based on the gross actual receipts without deducting the BSW as has been previously done.

In determining the freight, the amount indicated in the bill of lading or as certified by the ship agent shall be used as basis. However, if it is found by the examiner that the actual receipt is more than the manifested weight, the freight shall be adjusted accordingly.

Please see to it that all the personnel concerned in your respective ports are informed of these instructions.

(SGD.) ROLANDO A. GEOTINA  
Acting Commissioner of Customs"

The assessments were timely protested by Caltex before the Collector of Customs on June 9, 1982, July 21, 1982 and September 8, 1982,<sup>[2]</sup> respectively, on the ground that the BSW contents should have been deducted before imposing the assessable ad valorem duties. The protests were, however, disregarded in a decision dated December 19, 1983.

Caltex then elevated the case to the Commissioner of Customs, who affirmed the Collector's finding in a decision dated October 23, 1984, disposing as follows:

"WHEREFORE, finding no cogent reason to disturb the decision of the Collector of Customs, Port of Batangas, the same is hereby affirmed.

SO ORDERED."

Undaunted, Caltex filed a petition for review with the Court of Tax Appeals (CTA) raising the same argument. On August 9, 1991,<sup>[3]</sup> the CTA ruled in favor of Caltex and reversed the decisions of both the Collector of Customs and Commissioner of Customs, the dispositive portion of the decision reads:

"WHEREFORE, the petition is GRANTED. Respondent [Commissioner of Customs] should and is hereby ordered to refund or credit to petitioner the following amounts: P212,959.00 under Entry No. 163/82; P759,385.00 under Entry No. 204/82; P532,732.00 under Entry No. 293/82."<sup>[4]</sup>

Disagreeing with the CTA decision, the Commissioner of Customs filed a petition for review with the Court of Appeals questioning the decision. On February 12, 1992, the appellate court set aside the CTA's decision and reinstated the ruling of the Commissioner of Customs.<sup>[5]</sup> In reversing the CTA's decision, the Court of Appeals justified its ruling in this wise:

"The ad valorem duties should thus be based on the price paid by the importer as shown in the sales invoice. In this case, apparently the sale invoices do not indicate a distinct and separate price or value for the crude oil alone without the basic sediment and water contents or BSW. This is so because, as already stated, the BSW naturally occur in crude oil. In the case at bar, the BSW was only formed and produced during transit which should be considered an accession. Therefore, it should be included in the delivery of crude oil as part of what was actually purchased by the importer. (Civil Code, Art. 1166).

In computing the ad valorem duties on the basis of the sales invoice, (it becomes irrelevant whether the volume of crude oil increased while in transit by reason of BSW and other impurities, because the law mandates that the tax should be based on the home consumption value which is the price indicated in the sales invoice or the value of the importation. (Commissioner of Customs v. Proctor & Gamble, 169 SCRA 693 <sup>[1989]</sup>; Commissioner of Customs v. Court of Tax Appeals, 162 SCRA 730 <sup>[1988]</sup>; Commissioner of Customs v. Court of Tax Appeals, supra). Even if BSW contents are deducted from the actual gross barrels received by respondent Caltex, the price in the sales invoice would remain unaltered."

The decretal portion of the decision reads:<sup>[6]</sup>

“WHEREFORE, the decision appealed from is REVERSED and the decision of the Collector of Customs as affirmed by the Commissioner of Customs is REINSTATED.”

Dismayed by the sudden turn of events, Caltex filed a motion for reconsideration which was, however, denied by the Court of Appeals in a resolution dated March 19, 1992.<sup>[7]</sup> Hence, this petition.

The basic issue for resolution is whether the Basic Sediment and Water, as impurities, should have been deducted from the gross actual receipts to determine the proper imposable ad valorem duties.

Before discussing the crux of the petition, a preliminary matter to be threshed out is Caltex’s assertion that the Collector of Customs should have published the memorandum which increases the imposable duties for importation of oil, for in the absence of publication, the same would be violative of due process and Section 3502<sup>[8]</sup> of the Tariff and Customs Code.<sup>[9]</sup> At this juncture, it is important to note that the non-publication of the memorandum was not denied by the Commissioner of Customs.<sup>[10]</sup>

There is no doubt that issuances by an administrative agency have the force and effect of law.<sup>[11]</sup> Corollarily, when the issuances are of “general applicability,” publication is necessary as a requirement of due process.<sup>[12]</sup> In this regard, Commonwealth Act No. 638,<sup>[13]</sup> mandates that besides legislations and resolutions of public nature of the Congress of the Philippines, executive and administrative orders and proclamations which have general applicability must also be published.

It cannot be disputed that the questioned memorandum increases the imposable duties for the importation of oil, a departure from the previous practice. To be sure, the increase invariably interferes with the property rights of oil importers. Hence, the statutory norm of publication is necessary, not only for effectivity, but also to apprise those affected. Since the assailed memorandum was never published, it follows the same cannot be upheld.<sup>[14]</sup>

We, however, are not unmindful of the possible effect of this ruling upon our country’s tax revenue, in light of the fact that the genesis of instant petition took place some 16 years ago. Likewise, we cannot close our eyes to the fact that the collections were done in reliance on the validity of the memorandum. Thus, we are constrained to adopt a practical and realistic solution for after all, custom duties are taxes on import and export of goods, hence, it is the lifeblood of the nation.<sup>[15]</sup> Undoubtedly, to accept Caltex’s belated protestations will necessarily prejudice the public interest.

In *Fernandez v. Cuerva*,<sup>[16]</sup> which explained the effect of a declaration of invalidity of an assailed legislative or executive act, we declared:

“The growing awareness of the role of the judiciary as the governmental organ which has the final say on whether or not a legislative or executive measure is valid leads to a more appreciative attitude of the emerging

concept that a declaration of nullity may have legal consequences which the more orthodox view would deny. That for a period of time such a statute, treaty, executive order, or ordinance was in 'actual existence' appears to be indisputable. What is more appropriate and logical then than to consider it as 'an operative fact.'

In addition to the preceding discussion, a more glaring act which must be emphasized is that the importations occurred in 1982 or eleven (11) years after said memorandum was issued, hence, Caltex cannot feign ignorance as to the existence of such memorandum. Certainly, it is safe to assume that Caltex, as a regular importer of crude oil, had knowledge that, from 1971 the procedure for determining the ad valorem duties on crude oil importation was that the BSW content were to be included in imposing the duties due. However, from 1971 to 1982, Caltex made no move to question the validity of the memorandum nor did it assail the duties being charged on its shipment before the proper forum. In fact, it would not be unwarranted to conclude that during this period, Caltex continued importing crude oil under the procedures laid down by the Memorandum. To compound matters, Caltex offered no plausible explanation nor justifiable reason for its delay or omission in taking timely action against the memorandum which was already in existence for a period of nine years prior to the importations in question. The time-honored rule anchored on public policy is that relief will be denied to a litigant whose claim or demand has become "stale," or who has acquiesced in the prevailing situation for an unreasonable length of time, or who has not been vigilant or who has slept on his rights either by negligence, folly or inattention.<sup>[17]</sup> Caltex has no one to blame but itself.

With respect to the decisive issue posed by the instant petition, the axiomatic rule is that the dutiable value of an imported article subject to ad valorem is based on its home consumption value or price as freely offered for sale in wholesale quantities in the ordinary course of trade in the principal market of the country from where exported on the date of exportation to the Philippines. The home consumption value is the price declared in the consular, commercial, trade or sales invoice. Thus, in the leading case of *Commissioner of Customs v. Court of Tax Appeal*,<sup>[18]</sup> we held:

"(t)he law is clear and mandatory. The dutiable value of an imported article subject to an ad valorem rate of duty is based on its home consumption value or price as freely offered for sale in wholesale quantities in the ordinary course of trade in the principal markets of the country from where exported on the date of exportation to the Philippines. That home consumption value or price is the value or price declared in the consular, commercial, trade or sales invoice."

The above doctrine has consistently been applied by this Court in subsequent cases.<sup>[19]</sup>

Consequently, Caltex, in an effort to prove that the BSW contents should have been omitted in the purchase price, submitted the sales invoices provided by its seller in Saudi Arabia<sup>[20]</sup> indicating a net barrel computation, that is, crude oil without BSW.<sup>[21]</sup> Paradoxically, the Import Entry permit declaration it submitted before the Collector of Customs showed otherwise, that is the BSW contents were not deducted in the purchase price.<sup>[22]</sup>

Obviously, there is a discrepancy between the sales invoice and the Import Entry permit submitted by Caltex. Faced with this fact, we must uphold the latter as more conclusive. In the early case of *Murphy, Morris & Co. v. Collector of Customs*,<sup>[23]</sup> we held that in the absence of any compelling reason, sworn statements made before customs officials concerning an importation would render said declarations conclusive upon the party. Furthermore, under the Tariff and Customs Code, declarations and statements contained in the Import Entry Permit are presumed to be true and correct under the penalties of falsification and perjury.<sup>[24]</sup> Moreover, descriptions in entries and other documents are admissions against interest and presumptively correct.<sup>[25]</sup>

Our conclusion is premised on the fact that sales, commercial or consular invoices are not conclusive on the government. Our customs laws should not be at the mercy of importers who may avail of schemes and other arrangements to lower and reduce the face value of the articles covered by such invoices.<sup>[26]</sup> Noteworthy is the fact that: "If the customs authorities were bound by the invoice value, it is evident that they would be, to a considerable extent, at the mercy of foreign merchants and importers. The purpose of Congress in providing for an appraiser was to prevent fraud upon the customs, and thus protect the revenues of the Government."<sup>[27]</sup>

Conformably with the above discussion, a scrutiny of Caltex's Import Entry declaration covering the importation dated April 10, 1982, stated that it had paid a total purchase price of \$53,055,905, broken down as follows

	TOTAL BARRELS (Including BSW)	PRICE/BARREL	TOTAL PRICE
<b>ArabianLight/Medium</b>	1,411,310	\$32.964	\$46,522,733
<b>Arabian Heavy</b>	210,537	\$31.030	\$ 6,533,131
			\$53,055,905

It is important to note that in arriving at the total purchase price, the barrels representing the BSW were included in the computation. In other words, the 1,765 barrels of BSW of Arabian light/medium mix crude oil, as well as the 1,852 barrels of BSW for Arabian heavy, were declared by Caltex as part of the total purchase price.

If Caltex wanted to prove that, at the outset, the BSW contents were to be excluded from the original purchase price, then it should have declared in the Import Entry permit that it had only paid for the Arabian Light/Medium crude oil the amount of \$46,464,241, computed as follows:

<b>Gross Barrels</b>	1,411,310
<b>Less</b>	1,765 (BSW content)
<b>Net Barrels</b>	1,409,545
<b>Multiplied by</b>	\$ 32.964 per barrel
<b>TOTAL</b>	\$ 46,464,241