

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

**PILIPINAS SHELL PETROLEUM
CORPORTION,**

Petitioner,

- versus -

**COMMISSIONER NAPOLEON
MORALES, AS COMMISSIONER
OF CUSTOMS, JUAN N. TAN, AS
COLLECTOR OF CUSTOMS OF
THE PORT OF BATANGAS, AND
SIMPLICIO DOMINGO,**

Respondents.

C.T.A. EB Case No. 851
(CTA Case No. 8121)

Members:

ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, J.J.

Promulgated:

JUL 05 2012

W. Aquino
11:10 P.M.

X- -----X

DECISION

CASANOVA, J.:

This is an appeal by way of a Petition for Review¹, filed by petitioner Pilipinas Shell Petroleum Corporation, from the Decision² dated August 26, 2011 (the "Assailed Decision") dismissing petitioner's Verified Petition for Contempt and the Resolution³ dated December 2, 2011 (the "Assailed Resolution") denying petitioner's Motion for Reconsideration [Re: Decision dated 26 August 2011], both rendered by the Court of Tax Appeals Third Division in CTA Case No. 8121, entitled ***"Pilipinas Shell Petroleum Corporation, petitioner vs. Commissioner Napoleon Morales, as Commissioner of Customs, Juan N. Tan, and Simplicio Domingo"***.

¹ En Banc Rollo, pp. 8-88

² Division Docket (Vol. II), pp. 739-751

³ Ibid, pp. 849-852

Tan, as Collector of Customs of the Port of Batangas and Simplicio Domingo”.

The facts of the case, as narrated in the Assailed Decision, are as follows:

“Pilipinas Shell Petroleum Corporation (petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office at the Shell House, 156 Valero Street, Salcedo Village, Makati City, Metro Manila. Pilipinas Shell Petroleum Corporation is also the petitioner in CTA Case No. 8004, currently pending before the Court’s Third Division.

On the other hand, respondent Napoleon Morales is the Commissioner of the Bureau of Customs (BOC), a government agency tasked to, among others, collect customs duties, taxes, fees and other charges under the Tariff and Customs Code of the Philippines and other related laws, rules and regulations, as well as taxes in its capacity as collecting agent for the Bureau of Internal Revenue (BIR) under the National Internal Revenue Code (NIRC) and other related laws, rules and regulations.

Respondent Juan N. Tan is the District Collector of Customs Collection District No. IV at the Port of Batangas, who is a party-respondent in CTA Case No. 8004 currently pending before the Court’s Third Division; while respondent Simplicio Domingo is the Chief of Legal Services of the BOC.

In the instant Petition, it was primarily alleged that:

RESPONDENTS MUST BE HELD LIABLE FOR INDIRECT CONTEMPT IN VIOLATION OF SECTION 3, PARAGRAPHS (B) AND (D), RULE 71 OF THE RULES OF COURT WHEN THEY CONDUCTED THE PRESS CONFERENCE ON 08 APRIL 2010 AND CIRCULATED THE ‘PRESS STATEMENT’ WITH THE INTENT OF BRINGING THE LEGAL BATTLE FOR CCG/LCCG CASE TO THE MEDIA INSTEAD OF LEGALLY BEFORE THE HONORABLE COURT’S FIRST DIVISION (NOW THIRD DIVISION), THEREBY IMPEDING, OBSTRUCTING, AND DEGRADING THE ADMINISTRATION OF JUSTICE, AND IN DIRECT VIOLATION OF THE *RESOLUTION* DATED MARCH 12, 2010 OF THE HONORABLE COURT’S FIRST DIVISION.”

The CCG/LCCG case mentioned in the instant Petition is actually the Petition for Review filed by Pilipinas Shell Petroleum Corporation against the Commissioner of Customs, the Collector of Customs of the Port of Batangas, and the Bureau of Customs docketed as CTA Case No. 8004. It was during the pendency of the said case that the subject Resolution dated March 12, 2010 was issued, the pertinent portion of which reads:

'Likewise, during the pendency of the case, the parties and their respective counsels are ADVISED to refrain from discussing the merits of the case in the media as it may be considered CONTEMPTOUS by the Court.'

According to petitioner, respondent's acts of organizing and holding a Press Conference at the Makati Revenue District Office and distribution of 'Press Statement' to members of the media who attended the same were in direct contravention of the Resolution dated March 12, 2010, which expressly prohibited the parties to CTA Case No. 8004 and their counsel from divulging material information of the said case to the media.

Petitioner maintains that as a lawful order of the Court's First Division, respondents are obliged to abide by this order and should not have discussed material information of the said case to the media. However, in blatant violation of the Resolution dated March 12, 2010, respondents did not only give comments to the media, but during the Press Conference on April 8, 2010, accused the Presiding Justice of impropriety and engaged in unwarranted attacks against petitioner. The fact that respondents subsequently filed a Motion for Inhibition with this Court's First Division clearly shows that respondents were fully cognizant that the matters discussed during the Press Conference fall squarely within the jurisdiction of this Court's First Division.

On July 7, 2010, the instant case was consolidated with CTA Case No. 8004.

Thereafter, respondents filed with this Court their *Comment (On Petitioner's Verified Petition for Contempt dated 28 June 2010)* on 21 September 2010.

For its part petitioner filed its *Reply [Re: Comment (On Petitioner's Verified Petition for Contempt dated 28 June 2010) Dated 21 September 2010]* on October 29, 2010. 

Respondent also filed their *Supplemental Comment (On Petitioner's Verified Petition for Contempt dated 28 June 2010)* on November 4, 2010 to which petitioner filed its *Reply Ad Cautelam [Re: Supplemental Comment (On Petitioner's Verified Petition for Contempt dated 28 June 2010) Dated 27 October 2010]* on November 24, 2010.

During the hearing held on March 10, 2011, the parties agreed to file their respective Memorandum within fifteen (15) days from March 10, 2011, after which the case for indirect contempt shall be submitted for resolution.

Accordingly, petitioner filed its Memorandum on March 25, 2011; while respondents filed their Memorandum through registered mail on March 29, 2011. Subsequently, the case was submitted for decision on April 14, 2011.

After trial on the merits, the CTA Third Division promulgated a decision (the "Assailed Decision") on August 26, 2011, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the instant Petition for Indirect Contempt is hereby **DISMISSED** for lack of merit. However, both parties are hereby reminded to be more cautious in their dealings with the media in order for this Court to have a fair and orderly disposition of the subject case, unhampered by any extraneous influence that may tend to impair the impartiality of verdicts.

SO ORDERED."

On September 16, 2011, petitioner filed a Motion for Reconsideration [Re: Decision dated 26 August 2011]⁴ which was subsequently denied by the Court for lack of merit per Resolution⁵ (the "Assailed Resolution") promulgated on December 2, 2011. 

⁴ Ibid, pp. 752-807

⁵ Ibid, pp. 849-852

On December 27, 2011, petitioner filed a Motion for Extension of Time To File Petition for Review⁶ which the Court granted in a Resolution dated December 28, 2011, thereby giving petitioner a final and non-extendible period of fifteen (15) days from December 27, 2011 or until January 11, 2012, within which to file its Petition for Review.

On January 11, 2012, petitioner filed the instant Petition for Review.

On February 28, 2012, respondents filed a Motion for Extension of Time To File Comment⁷ which was granted by the Court per its Resolution⁸ dated March 7, 2012.

On April 2, 2012, respondents filed their COMMENT and, thereafter, on April 13, 2012, the case was deemed submitted for decision per *En Banc* Resolution promulgated on the same date.

Petitioner, in its Petition for Review, raised the following assignment of errors, to wit:

"ASSIGNMENT OF ERRORS

I

WITH DUE RESPECT, THE HONORABLE COURT'S THIRD DIVISION GRAVELY AND SERIOUSLY ERRED IN DISMISSING PETITIONER PSPC'S VERIFIED PETITION FOR INDIRECT CONTEMPT ON THE GROUND THAT THE RESOLUTION DATED 12 MARCH 2010 ISSUED BY THE HONORABLE COURT'S FIRST DIVISION WAS MERELY AN ADVISORY TO THE PARTIES, AND THAT NON-COMPLIANCE THEREOF IS NOT *IPSO FACTO* CONTEMPTUOUS WHICH, WITH DUE RESPECT, IS CONTRARY TO THE CLEAR AND REAL IMPORT OF SAID RESOLUTION.

II

THE HONORABLE COURT'S THIRD DIVISION GRAVELY AND SERIOUSLY ERRED IN RULING THAT THERE WAS NO EVIDENCE ON RECORD TO PROVE THAT CUSTOMS RESPONDENTS ARE LIABLE FOR INDIRECT CONTEMPT OF COURT FOR THEIR BLATANT VIOLATION OF THE RESOLUTION DATED 12 MARCH 2010. 

⁶ Ibid, pp. 853-857

⁷ En Banc Rollo, pp. 552-554

⁸ Ibid, p. 556

III

WITH DUE RESPECT, THE HONORABLE COURT'S THIRD DIVISION GRAVELY AND SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THE REPREHENSIBLE ACTS OF CUSTOMS RESPONDENTS AS A DIRECT AFFRONT TO THE DIGNITY OF THE HONORABLE COURT AND WITH OBVIOUS INTENTION TO CAUSE DAMAGE TO THE REPUTATION OF PETITIONER PSPC."

Respondents, on the other hand, presented the following arguments:

"1. THE HONORABLE COURT (THIRD DIVISION) CORRECTLY HELD THAT THE SUBJECT RESOLUTION IS MERELY AN ADVISORY TO THE PARTIES AND THAT NON-COMPLIANCE THEREOF IS NOT *IPSO FACTO* CONTEMPTUOUS.

2. THE HONORABLE COURT (THIRD DIVISION) CORRECTLY HELD THAT RESPONDENTS ARE NOT GUILTY OF INDIRECT CONTEMPT."

After a careful and thorough evaluation of the case, We find no merit in the Petition.

As borne out by the records of the case, the CTA Third Division had already fully and exhaustively resolved the issue in relation to the arguments raised in the Petition.

As aptly discussed by the CTA Third Division and, We quote with approval, to wit:

"Upon careful examination of the records of this case, the Court finds that:

1. There was doubt in the mind of respondent as to the real import of the Order advising the parties to refrain from discussing the merits of the case, as to whether it is absolute or permissive; 

2. Petitioner failed to support its averments specifying the direct participation of each of the respondents in the acts alleged to be contemptuous;

3. Petitioner failed to prove that the subject Press Conference was organized by the respondents themselves;

4. Petitioner failed to establish that the foregoing utterance was directly intended to malign or impair upon the dignity of the Court. Hence, petitioner failed to prove the element of 'intent' on the part of the respondents;

5. Petitioner failed to establish that the alleged Press Statement which was submitted by petitioner originated from respondents. Thus, the Court cannot give weight to the subject Press Statement from which the rest of the charges made by petitioner were based; and

6. Aside from the excerpts (*sic*) taken from newspaper clippings and statements taken from television news reports, petitioner failed to present the transcript of the Press Conference which could have revealed what actually transpired in the said Press Conference.

A criminal contempt proceeding has been characterized as *sui generis* as it partakes some of the elements of both civil and criminal proceedings, without completely falling under either proceeding. Its identification with a criminal proceeding is in the use of the principles and rules applicable to criminal cases, to the extent that criminal procedure is consistent with the summary nature of a contempt proceeding. The Supreme Court has consistently held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt; that the accused is afforded many of the protections provided in regular criminal cases; and that proceedings under statutes governing them are to be strictly construed.

Equally settled is the rule that contempt is not presumed. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt. The presumption of innocence can be

overcome only by proof of guilt beyond reasonable doubt, which means proof to the satisfaction of the court and keeping in mind the presumption of innocence that precludes every reasonable hypothesis except that for which it is given. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely true than the contrary. It must establish the truth of the fact to a reasonable certainty and moral certainty – a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.

For all the foregoing, this Court finds that petitioner failed to prove, beyond reasonable doubt, that respondents are liable for indirect contempt.

At this juncture, it bears stressing that the power to declare a person in contempt of court must be exercised on the preservative, not vindictive principle, and on the corrective and not retaliatory idea of punishment. As aptly ruled by the Supreme Court in the case of *Nazareno v. Barnes*:

'A judge, as a public servant, should not be so thin-skinned or sensitive as to feel hurt or offended if a citizen expresses an honest opinion about him which may not altogether be flattering to him. After all, what matters is that a judge performs his duties in accordance with the dictates of his conscience and the light that God has given him. A judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties. He should always bear in mind that the power of the court to punish for contempt should be exercised for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.'

In this case, even if the afore-mentioned statements were actually delivered by respondents in the Press Conference, there is no showing that respondents made such utterances to malign the Court. Rather, they were used to express what they believed as a violation of the basic principle of judicial ethics and to show their intention to file a Motion for Inhibition before this Court. Accordingly, the subject statements, taken in isolation from the rest of the presumptions made by petitioner, cannot be considered by this Court as contemptuous. 

WHEREFORE, premises considered, the instant Petition for Indirect Contempt is hereby **DISMISSED** for lack of merit. However, both parties are hereby reminded to be more cautious in their dealings with the media in order for this Court to have a fair and orderly disposition of the subject case, unhampered by any extraneous influence that may tend to impair the impartiality of verdicts.

SO ORDERED."

In sum, the Court *En Banc* finds no cogent reason and justification to disturb the findings and conclusion spelled out in the Assailed Decision dated August 26, 2011 and the Assailed Resolution dated December 2, 2011 of the CTA Third Division.

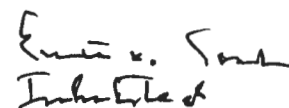
WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the August 26, 2011 Decision and December 2, 2011 Resolution of the CTA Third Division are hereby **AFFIRMED** *in toto*.

SO ORDERED.



CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

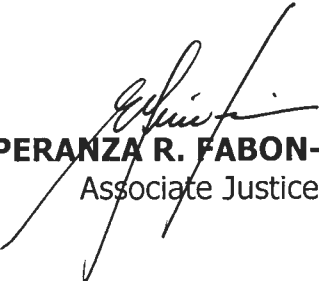

ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice

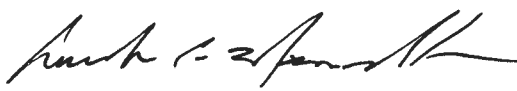

OLGA PALANCA-ENRIQUEZ
Associate Justice



ESPERANZA R. FABON-VICTORINO
Associate Justice



CIELITO N. MINDARO-GRULLA
Associate Justice



AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.



ERNESTO D. ACOSTA
Presiding Justice