

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER EN BANC

PILIPINAS SHELL PETROLEUM
CORPORATION,

Petitioner,

C.T.A. EB NO. 472
(C.T.A. CASE NO. 6485)

Present:

-versus-

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
MAY 13 2010

2:48pm

X ----- X

DECISION

PALANCA-ENRIQUEZ, J.:

Under *Section 1301* of the *TCCP, as amended*, imported articles must be entered within a non-extendible period of thirty (30) days from the date of discharge of the last package from a vessel. Otherwise, the BOC will deem the imported goods impliedly abandoned under *Section 1801* of the same Code (*Chevron Philippines, Inc. vs. Commissioner of the Bureau of Customs, 561 SCRA 710*).

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THE CASE

This is a Petition for Review filed by Pilipinas Shell Petroleum Corporation (hereafter “petitioner Shell”) under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*, as amended, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision dated June 19, 2008 and Resolution dated February 24, 2009 rendered by the Former First Division of this Court in C.T.A. Case No. 6485, the respective dispositive portions of which read, as follows:

“**WHEREFORE**, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner is **ORDERED TO PAY** the amount of NINE HUNDRED THIRTY SIX MILLION EIGHT HUNDRED NINETY NINE THOUSAND EIGHT HUNDRED EIGHTY THREE PESOS and NINETY CENTAVOS (P936,899,883.90).

SO ORDERED.”

“**WHEREFORE**, petitioner’s *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.”



THE PARTIES

Petitioner Shell is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the Shell House, 156 Valero Street, Salcedo Village, Makati City, Metro Manila.

Respondent, on the other hand, is the Commissioner of the Bureau of Customs (hereafter “respondent COC”) vested with authority to assess and collect customs duties, fees and other charges under the Tariff and Customs Code of the Philippines (TCCP), and the enforcement of said Code and related laws, rules and regulations. Respondent may be served with legal processes at his office at the Bureau of Customs, Port Area, Manila, or through his counsel, the Office of the Solicitor General, at 134 Amorsolo Street, Legaspi Village, Makati City.

THE FACTS

The facts, as culled from the records, are as follows:

Petitioner Shell is engaged in the business of marketing petroleum products, which it refines from crude oil. Petitioner Shell, as well as two other oil companies, Caltex Philippines, Inc. and Petron Corporation, imports the crude oil which they refine into finished petroleum products.



On April 7, 1996, petitioner Shell's importation of 1,979,674.85 U.S. barrels of Arab Light Crude Oil, thru the Ex MT Lanistels, arrived.

The said shipment was unloaded from the carrying vessels docked at a wharf owned and operated by petitioner, to its oil tanks located at Batangas City, within a period of three (3) days from its arrival.

On April 16, 1996, *RA 8180*, otherwise known as the "Downstream Oil Industry Deregulation Act of 1996" took effect. *RA 8180* provides, among others, for the reduction of the tariff duty on imported crude oil from 10% to 3%.

On August 1, 2000, or more than four (4) years after the import entry for the aforementioned crude oil importation was liquidated, petitioner Shell received a demand letter dated July 27, 2000 from the BOC, through the District Collector of Batangas, assessing petitioner Shell of the difference between the amount of duties paid by it on the importation (at the rate of 3%) and the amount allegedly due (at the old rate of 10%). The BOC cited, as ground for the assessment, the arrival of the importations before the effectivity of *RA 8180*.

On August 14, 2000, petitioner Shell protested the assessment for said deficiency duties, to which the District Collector of the BOC replied



on September 4, 2000, reiterating his demand for the payment of deficiency customs duties.

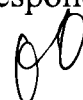
On October 11, 2000, petitioner Shell appealed the decision of the District Collector to respondent COC.

On October 29, 2001, petitioner Shell received by telefax from respondent COC a demand letter for the payment of the amount of P936,899,885.90, representing the dutiable value of its 1996 crude oil importation, which was allegedly abandoned in favor of the government by operation of law. Respondent COC stated that Import Entry No. 683-96 covering the importation was irregularly filed and accepted beyond the thirty-day (30) period prescribed by law.

On November 7, 2001, petitioner Shell wrote respondent COC protesting the demand letter for lack of factual and legal basis, and on the ground of prescription.

On December 3, 2001, petitioner Shell wrote the BOC Director of Legal Service, seeking clarification as to what course of action the BOC is taking; while reiterating its position that respondent COC's demand letters dated October 29, 2001 and July 27, 2000 have no legal basis.

On December 28, 2001, BOC Deputy Commissioner Gil A. Valera sent petitioner a letter stating that petitioner Shell has not responded to



respondent COC's October 29, 2001 demand letter and demanded payment of the amount of P936,899,885.90, under threat to hold delivery of petitioner Shell's subsequent shipments, pursuant to *Section 1508 of the TCCP*, and to file a civil complaint against petitioner Shell.

Petitioner Shell then sent a letter dated January 4, 2002 informing Deputy Commissioner that it already sent the November 7, 2001 letter to respondent COC and the December 3, 2001 letter to the Director of Legal Service, BOC.

On April 25, 2002, petitioner Shell was served summons in Civil Case No. 02103239, entitled "*Bureau of Customs vs. Pilipinas Shell Petroleum Corp. and Caltex Philippines, Inc.*" filed on April 11, 2002 by the BOC for Collection of a Sum of Money against petitioner Shell and Caltex Philippines, Inc., with the Regional Trial Court, Branch XXV, of Manila.

Taking into consideration that the filing of a complaint in court is the final decision of the BOC on its protest, on May 27, 2002 petitioner Shell filed with this Court a Petition for Review, docketed as C.T.A. Case No. 6485.

On August 2, 2002, respondent COC filed a "Motion to Dismiss" on grounds of lack of jurisdiction and for failure to state a cause of action,



which the Former First Division denied in a Resolution dated January 17, 2003.

On February 14, 2003, respondent COC filed a "Motion for Reconsideration", which the Former First Division denied on June 16, 2003.

On August 13, 2003, respondent COC, through the Office of the Solicitor General, filed with the Court of Appeals a "Petition for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction", docketed as CA-G.R. SP No. 78563, praying for the reversal and setting aside of the Resolutions dated January 17, 2003 and June 16, 2003 issued by the Former First Division.

Meanwhile, in C.T.A. Case No. 6485, trial on the merits ensued.

On February 15, 2007, the Former First Division of the Court of Appeals rendered a Decision in CA-G.R. SP No. 78563 dismissing respondent COC's petition. Subsequently, on July 24, 2007, the same Division of the Court of Appeals issued a Resolution denying respondent's "Motion for Reconsideration."

On June 19, 2008, the Former First Division of this Court rendered a Decision in C.T.A. Case No. 6485 dismissing the Petition for Review



and ordering petitioner Shell to pay respondent COC the amount of P936,899,883.90, representing total dutiable value of the subject importation.

Not satisfied, on July 9, 2008, petitioner Shell filed a “Motion for Reconsideration”, which the Former First Division denied in a Resolution dated February 24, 2009.

On March 31, 2009, petitioner Shell filed the instant Petition for Review.

On April 21, 2009, without necessarily giving due course to the petition, we required respondent COC to file his comment, not a motion to dismiss, within ten (10) days from notice, and petitioner Shell may file its reply, within five (5) days from receipt of respondent COC’s comment.

On June 2, 2009 respondent COC filed his “Comment”, to which petitioner Shell filed its “Reply” thereto on June 24, 2009.

On July 1, 2009, this case was deemed submitted for decision.

ISSUES

Petitioner raises the following issues:



I

WHETHER OR NOT THE FIRST DIVISION GRAVELY AND SERIOUSLY ERRED IN FINDING THAT PETITIONER PSPC IS GUILTY OF FRAUD DESPITE THE ABSENCE OF ANY EVIDENCE ESTABLISHING THE SAME.

II

WHETHER OR NOT THE FIRST DIVISION GRAVELY AND SERIOUSLY ERRED IN BASING ITS FINDING OF FRAUD ON AN ALLEGED MEMORANDUM DATED 02 FEBRUARY 2001 ALLEGEDLY ISSUED BY THE BOC'S IPD-CIIS ESPECIALLY CONSIDERING THAT THIS DOCUMENT WAS NEVER TESTIFIED UPON NOR FORMALLY OFFERED AS EVIDENCE IN THE INSTANT CASE.

III

WHETHER OR NOT THE FIRST DIVISION GRAVELY AND SERIOUSLY ERRED IN RULING THAT RESPONDENT COMMISSIONER'S CLAIM AGAINST PETITIONER PSPC HAS NOT PRESCRIBED CONSIDERING THAT PETITIONER PSPC IS NOT GUILTY OF FRAUD.

IV

WHETHER OR NOT THE FIRST DIVISION GRAVELY AND SERIOUSLY ERRED IN FINDING THAT THE SUBJECT SHIPMENT HAS BEEN ABANDONED IN FAVOR OF THE GOVERNMENT.



Principal Issue

The foregoing issues boil down to the principal issue of whether the subject shipment has been deemed abandoned in favor of the government.

THE FORMER COURT *EN BANC*'S RULING

The petition is without merit.

Petitioner Shell's Arguments

Petitioner Shell argues that there can be no abandonment by operation of law in the case of petitioner. *Section 1801 of the TCCP* requires prior notice before any implied abandonment may take place. It is undisputed that respondent Commissioner failed to comply with the statutory requirement of due notice. Respondent Commissioner has utterly failed to observe or comply with the requirements not only of *Section 1801 of the TCCP*, but also with his very own rules, as set by CAO 5-93 and CMO 15-94 on the procedure prior to claiming an imported article as abandoned. Petitioner did not show any intention of abandoning the shipment. On the contrary, the actuations of petitioner surrounding the arrival of the shipment confirm that it has no intention to abandon its goods. Under *Section 1801 or Section 1802 of the TCCP*, it is clear that respondent Commissioner has violated the statutory

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requirements for abandonment, which makes his actions void and of no effect. Accordingly, it was erroneous for the CTA In Division to rule that the subject shipment has been abandoned and that petitioner is liable for the entire value of the shipment.

Respondent COC's

Counter-Arguments

Respondent COC, on the other hand, counter-argues that petitioner's failure to file its Import Entry and Internal Revenue Declarations (IEIRDs), within the non-extendible period of thirty (30) days, is fatal to its cause of action. Consequently, the non-filing of the import entries within the allowable thirty (30) days *ipso facto* resulted to the abandonment of the subject oil importation of petitioner Shell in favor of the government. Petitioner Shell belatedly filed its import entries on May 23, 1996, or barely 45 days since the last discharge of its imported article. It bears stressing that said abandonment shall *ipso facto* take place, without need of any proceeding or declaration prior to any transfer of ownership. As such, the subject imported articles had already been placed under the possession and ownership of the government. Accordingly, when these articles were used by petitioner and in its refinery, what it was actually disposing of was the property of the

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government. Consequently, from the disposal of a property not under its ownership, it is just proper that petitioner Shell should be held liable to the government for the payment of the total dutiable value of the subject shipment.

We rule for respondent COC.

Pursuant to *Section 205 of the Tariff and Customs Code of the Philippines (TCCP)*, imported articles shall be deemed “entered” in the Philippines for consumption when the specified entry form is properly filed and accepted, together with any related documents required by the provisions of this Code and/or regulations to be filed with such form at the time of entry, at the port or station by the customs official designated to receive such entry papers, and any duties, taxes and/or other lawful charges required to be paid at the time of making such entry have been paid or secured to be paid with the customs official designated to receive such monies, provided that the article has previously arrived within the limits of the port of entry.

Clearly, the operative act that constitutes “entry” of the imported articles at the port of entry is the filing and acceptance of the “specified entry form”, together with the other documents required by law and



regulations. There is no dispute that the “specified entry form” refers to the IEIRD. *Section 205* defines the precise moment when the imported articles are deemed entered (*Chevron Philippines, Inc. vs. Commissioner of the Bureau of Customs, supra*).

In this case, records show that the last day of discharge of petitioner Shell’s April 7, 1996 importation of 1,979,674.85 US barrels of Arab crude oil covered by Entry No. 683-96 was on April 10, 1996. Hence, the counting of the mandatory thirty (30) day period to file the required entry commenced on April 10, 1996. It is undisputed that petitioner Shell filed its Import Entry and Internal Revenue Declarations (IEIRDs) only on May 23, 1996, which is 13 days late.

Section 1301 of the TCCP expressly provides in clear and unequivocal language that imported articles must be entered within a non-extendible period of thirty (30) days from the date of discharge of the last package, thus:

“SEC. 1301. Persons Authorized to Make Import Entry. - Imported articles must be entered in the customhouse at the port of entry *within thirty (30) days, which shall not be extendible from date of discharge of the last package from the vessel* or aircraft either (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a holder of the bill or (c) by a person duly empowered to act as agent or attorney-in-fact for each holder: Provided, That where the



entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: Provided, further, That such statements under oath shall constitute *prima facie* evidence of knowledge and consent of the importer of violation against applicable provisions of this Code when the importation is found to be unlawful.”
(*Emphasis supplied*)

Pursuant to the above provision, imported articles “must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, from date of discharge of the last package. It prescribes a non-extendible thirty-day within which the imported articles must be “entered” in the customhouse.

On the other hand, *Sections 1801 and 1802 of the TCCP* provide for the effects of failure to comply with the mandatory requirement prescribed by *Section 1301 that imported articles must be entered, within a non-extendible period of thirty (30) days*, as follows:

“**SEC. 1801.** *Abandonment Kinds and Effect of.* – An imported article is deemed abandoned under any of the following circumstances:

a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or

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

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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 of claim of such importation.

Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein (R.A. 7651, June 04, 1993)."

"**SEC. 1802. *Abandonment of Imported Articles.*** – An abandoned article shall *ipso facto* be deemed the property of the Government and shall be disposed in accordance with the provisions of this Code.

Nothing in this section shall be construed as relieving the owner or importer from any criminal liability which may arise from any violation of law committed in connection with the importation of the abandoned article.

Any official or employee of the Bureau of Customs or of other government agencies who, having knowledge of the existence of an abandoned article or having control or custody of such abandoned article, fails to report to the Collector within twenty-four hours from the time the article is deemed abandoned, shall be punished with the penalties prescribed in Paragraph 1, Section 3604 of this Code (R.A. 7651, June 04, 1993)."

Pursuant to the above provisions, failure to file an entry within the non-extendible period of thirty (30) days prescribed by *Section 1301* results to implied abandonment of the imported articles, which shall *ipso facto* be deemed the property of the government.



Thus, in the recent case of Chevron (supra), the Supreme Court ruled:

**“THE IMPORTATIONS WERE ABANDONED
IN FAVOR OF THE GOVERNMENT**

The law is clear and explicit. It gives a non-extendible period of 30 days for the importer to file the entry which we have already ruled pertains to both the IED and IEIRD. Thus under Section 1801 in relation to Section 1301, when the importer fails to file the entry within the said period, he "shall be deemed to have renounced all his interests and property rights' to the importations and these shall be considered impliedly abandoned in favor of the government:

‘Section 1801. *Abandonment, Kinds and Effect of.* -

X X X X X X X X X

Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein.’

According to petitioner, the shipments should not be considered impliedly abandoned because none of its overt acts (filing of the IEDs and paying advance duties) revealed any intention to abandon the importations.

Unfortunately for petitioner, it was the law itself which considered the importation abandoned when it failed to file the IEIRDs within the allotted time. Before it was amended, Section 1801 was worded as follows:

‘Sec. 1801. *Abandonment, Kinds and Effect of.* -
Abandonment is express when it is made direct to the

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collector by the interested party in writing and it is implied when, from the action or omission of the interested party, an intention to abandon can be clearly inferred. The failure of any interested party to file the import entry within fifteen days or any extension thereof from the discharge of the vessel or aircraft, shall be implied abandonment. An implied abandonment shall be not be effective until the article is declared by the collector to have been abandoned after notice thereof is given to the interested party as in seizure cases.

Any person who abandons an imported article renounces all his interests and property rights therein.'

After it was amended by RA 7651, there was an indubitable shift in language as to what could be considered implied abandonment:

'Section 1801. *Abandonment, Kinds and Effect of.*
– An imported article is deemed abandoned under any of the following circumstances:

- a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or
- 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 x x x x'

From the wording of the amendment, RA 7651 no longer requires that there be other acts or omissions where an intent to abandon can be inferred. It is enough that the importer fails to file the required import entries within the reglementary period. The lawmakers could have easily retained the words used in the old law (with respect to the




intention to abandon) but opted to omit them. It would be error on our part to continue applying the old law despite the clear changes introduced by the amendment.”

**Notice was not necessary
under the circumstances**

In the attempt to further escape itself from the application of *Section 1801*, petitioner Shell argues that respondent COC failed to observe due notice as required by said provision and that the ruling in *Chevron* is not applicable since fraud is wanting in this case.

Again, we do not agree.

The due notice required under *Section 1301* is the notice of the arrival of the shipment. In this case, pursuant to the *Chevron* case, notice to petitioner Shell is not required under the peculiar circumstances of the case. Petitioner Shell, like *Chevron*, is a regular, large-scale and multinational importer of oil and oil products, who falls under the category of a knowledgeable importer, familiar with the governing rules and procedures in the release of importations.

More importantly, petitioner Shell even admitted that it filed an application for a Special Permit to Discharge and paid the corresponding advance duties on March 22, 1996 (*Exhibits “K” and “P”*), which undeniably proved knowledge on the part of petitioner Shell of the



arrival of the shipment. Likewise, upon arrival of the shipment, they were unloaded from the carrying vessels docked at the wharf owned by petitioner Shell at Tabangao, Batangas City; thus, petitioner Shell was fully aware that their importation had already arrived.

As a consequence of abandonment, *Section 1802 of the TCCP, as amended*, provides:

“**SEC. 1802.** Abandonment of Imported Articles. - An abandoned article shall *ipso facto* be deemed the property of the Government and shall be disposed of in accordance with the provisions of this Code.”

As defined by the Supreme Court in the Chevron case, the term ‘*ipso facto*’ is defined as ‘by the very act itself’ or ‘by mere act.’ Probably a closer translation of the Latin term would be ‘by the fact itself.’ Thus, there is no need for any affirmative act on the part of the government with respect to the abandoned imported articles, since the law itself provides that the abandoned articles shall *ipso facto* be deemed the property of the government. Ownership over the abandoned importation was transferred to the government by operation of law under *Section 1802 of the TCCP, as amended by RA 7651*.

Petitioner Shell’s failure to file the required entries, within the prescribed non-extendible period of thirty (30) days from date of



discharge of the last package from the carrying vessel, constitutes implied abandonment of its oil importation. This means, that from the precise moment that the non-extendible thirty-day period had lapsed, the abandoned shipment was deemed the property of the government. Therefore, when petitioner withdrew the oil shipment for consumption, it appropriated for itself properties which already belonged to the government. Accordingly, petitioner Shell is liable for the total dutiable value of the shipment of imported crude oil amounting to P965,876,139.00.

Petitioner Shell's contention that the belated filing of its import entries is justified due to the late arrival of its import documents, which are necessary for the proper computation of the import duties, cannot be sustained.

As aptly ruled by the Former First Division, petitioner's reasons for not filing within the period prescribed by the law are mere lame excuses, thus:

"This Court finds petitioner's excuses, that the causes for the delay in filing of IEIRD are delay in the arrival of the commercial invoice; and the necessity to correct an error in the volume of crude oil received by Petitioner, is implausible. Records show that two Bills of Lading were simultaneously issued on March 5, 1996 for the carriage of Arab Light crude oil. One Bill of lading was for 1,880,057

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US barrels; while the other Bill of lading was for 104,448 US barrels. Thus, the net of imported crude oil can be easily computed as 1,984.505 US barrels. The Bills of lading should have been submitted as supporting document, together with the IEIRD, for the determination of the correct amount of customs duty which petitioner should pay for its importation.

As there was an implied abandonment, the Government was the owner of the shipment at the time when petitioner withdrew the same. Consequently, petitioner should be held liable for the total dutiable value of the shipment of Arab Light crude oil. xxx”

The Court *En Banc* cannot also accept such excuses, as the absence of supporting documents should not have prevented petitioner Shell from complying with the mandatory non-extendible period, since the law prescribes an extremely serious consequence for delayed filing. If this kind of excuse was to be accepted, then the collection of customs duties would be at the mercy of importers, which our lawmakers try to avoid.

For all the foregoing, we rule that the late filing of the IEIRDs alone, which constituted implied abandonment, makes petitioner Shell liable for the payment of the dutiable value of the imported crude oil. Even if there are no findings of fraud, petitioner Shell is still liable for the payment of the dutiable value by operation of law.

Thus, the Former First Division aptly ruled:



“As there was an implied abandonment, the Government was the owner of the shipment at the time when petitioner withdrew the same. Consequently, petitioner should be held liable for the total dutiable value of the shipment of Arab Light crude oil. The total dutiable value of the shipment should be computed at the time the importation was withdrawn from the carrying vessel pursuant to Section 204 of the TCCP, which reads:

‘Section 204. Effective Date of Rates of Import Duty.- Imported articles shall be subject to the rate or rates of import duty existing at the time of entry, or withdrawal from warehouse, in the Philippines, for consumption.

xxx xxx xxx’

At the time the imported article arrived and removed from the carrying vessel, the rate of import duty applicable was 10%. As computed by the respondent, petitioner is liable to pay the amount P936,899,883.90.”

Having reached the conclusion that the subject importation of petitioner Shell has been deemed abandoned in favor of the government, petitioner Shell should, therefore, be held liable for the total dutiable value of the shipment.

As regards the issue on the existence of fraud, it should be emphasized that fraud is not controlling in this case. Even in the absence of fraud, petitioner Shell is still liable for the payment of the dutiable value by operation of law. The liability of petitioner Shell for the payment of the dutiable value of its imported crude oil arose from the



moment it appropriated for itself the said importation, which were already a property of the government by operation of law. Absence of fraud in this case would not exclude petitioner Shell from the coverage of *Sections 1801 and 1802* of the *TCCP*.

However, a perusal of the assailed decision showed that the Former First Division did not impose any legal interest. In the case of *Eastern Shipping Lines, Inc. vs. Court of Appeals and Mercantile Insurance Company, Inc.*, (234 SCRA 78), the Supreme Court ruled:

"I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.”

Pursuant to the above ruling, the total dutiable value amounting to P936,899,833.90 shall bear a legal interest of six percent (6%) per annum from the promulgation of the Former First Division’s Decision on June 19, 2008. Upon finality of the decision, the sum so awarded shall bear an interest at the rate of twelve percent (12%) per annum until its full satisfaction.



WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED**. The Decision dated June 19, 2008 and Resolution dated February 24, 2009 rendered by the Former First Division are hereby **AFFIRMED** with modification as to the imposition of the legal interest. Accordingly, the dispositive portion of the assailed Decision is hereby amended to read, as follows:

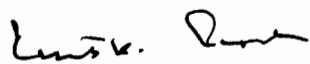
“WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner is **ORDERED TO PAY** the amount of **NINE HUNDRED THIRTY SIX MILLION EIGHT HUNDRED NINETY NINE THOUSAND EIGHT HUNDRED EIGHTY THREE PESOS and NINETY CENTAVOS (P936,899,883.90)**, plus six percent (6%) legal interest per annum accruing from the date of promulgation of this Decision until its finality. Upon finality of this Decision, the sum so awarded shall bear an interest at the rate of twelve percent (12%) per annum until its full satisfaction.

SO ORDERED.”

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice

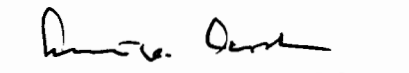

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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