REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARRARA MARBLE PHILIPPINES, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 5039

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
MAY 07 1996

x - x

DECISION

This is an appeal from the decision of the Commissioner of Customs, dated September 29, 1993, which affirmed the decision of the Collector of Customs of Batangas decreeing the forfeiture of the following pieces of machinery, thus:

1) Special circular saw for vertical and horizontal cutting of strips Model Block Tailor BK-1200 with switch gear, contactor control and reinforced main motor, and

2) Diamond Sawing Machine, Model TBS 500D, including switch gear cabinet with contactor for all motors.

It is important to point out at the beginning of this disquisition that the instant case is symbiotically related to another case entitled **Engineer Franklin Policarpio vs. The Honorable Commissioner of Customs and**

Deputy Commissioner of Customs, Licerio Evangelista, CTA Case No. 5057, which we will cite hereinafter as the "Policarpio case" for brevity. These two cases are related in the sense that the pieces of machinery aforementioned which were the subject of the forfeiture embodied in the presently disputed decision of the Commissioner are the same items being claimed by Engineer Franklin Policarpio as petitioner in the Policarpio case aforecited. In fine, the decision of the Commissioner dated July 28, 1993 being appealed in this petition is the same one subject of appeal in the Policarpio case.

The facts as borne out by the Customs records as well as the CTA records reveal a story, although at times marred by different and inconsistent versions, nevertheless disclose a web of events that leads us to a clear view of the core of the controversy.

Petitioner in the instant case claims ownership of the aforementioned items that were forfeited by the respondent in favor of the government. Petitioner insists that he obtained ownership over said items by virtue of a local sale evidenced by two deeds of Absolute Sale. It further alleges that their company never imported the articles much less caused their importation. The fact of importation was made known to them only when they received from respondent a warrant of seizure and detention accompanied with a notice for the forfeiture proceedings of the subject articles. Now petitioner refutes the decree of forfeiture by laying down the premise that the pieces of machinery forfeited in favor of the government were originally part of lot 15 awarded to Mr. Franklin Policarpio as the highest bidder in the auction sale conducted by the Bureau of Customs on April 10, 1987 (Paragraph I, of "Discussion" embodied in the Petition for Review, page 10, CTA records). Petitioner contends that by virtue of such sale, all duties and taxes due on such importation were already paid and if these taxes due the government have all been satisfied, then the respondent, as representative of the government, no longer has the jurisdiction to seize the articles because the importation as defined by the law has been completed. It is then the argument of the petitioner that once importation has been completed by the payment of duties and taxes, then the respondent is no longer vested with the authority to forfeit the same. Petitioner suspects that respondent seized the properties in order to recover them in behalf of Mr. Franklin Policarpio, who was the highest bidder in the auction sale conducted on April 10, 1987. If this is so, petitioner contends that the Collector of Customs is not empowered to determine the ownership over a particular article because this prerogative belongs to the ordinary courts of justice.

Respondent on the other hand, agreed with the petitioner that the pieces of machinery subject of the forfeiture case were part of lot 15 which was awarded to Franklin Policarpio in a public auction sale held on April 10, 1987 (see paragraph no. 4 of Answer, page 48, CTA records). To provide a legal basis for acquiring jurisdiction over said properties, respondent offers the proposition that since the pieces of machinery were illegally withdrawn from Customs custody before it can be delivered to Franklin Policarpio, the payment made by the latter as the highest bidder could not have covered the said items, thus the duties and taxes corresponding to the missing items are still unpaid, hence importation in reference to its legal definition has not yet ceased. Respondent then contends that in this case, he still has jurisdiction over said items.

During the pendency of the proceedings, several individuals represented by Mary Ann Reyes Luz-Puno asked for leave of Court to intervene in the instant case because as minority stockholders and receiver of petitioner corporation, they have a legal interest in the matter under litigation. This Motion to Intervene was granted by this Court in a resolution, dated March 28,

1994. Thereafter, the intervenors filed their complaint-in-intervention on July 5, 1994 praying that they be allowed to post a bond to allow them to possess the subject pieces of machinery during the pendency of the proceedings. This was subsequently approved by this Court in a resolution, dated August 23, 1994, on the condition that the said intervenors post a cash bond. However, records of this case show that the intervenors no longer pursued the posting of the cash bond and submitted the case for decision by filing a Memorandum of Arguments on March 4, 1996.

Before Us is a controversy involving three claimants contesting the ownership of two pieces of machinery. Petitioner in the instant case claims to be the owner by virtue of a contract of sale evidenced by two deeds of absolute sale covering said articles. Franklin Policarpio, the petitioner in CTA Case No. 5057, insists that he is the owner because as the winning bidder in the auction sale of subject items, he is entitled to the same. Lastly, the Commissioner of Customs as the representative of the government also claims to be the owner on the ground that taxes and duties due on its importation have not yet been paid, hence, it is the government's right to sell the same to satisfy the various tax liabilities incurred because of the importation.

The issues to be resolved in this case can be condensed into the resolution of two queries, thus:

1) Whether or not the decree of forfeiture handed down by the Collector of Customs of Batangas and later affirmed by the Commissioner, rests on a sound legal basis;

2) If the answer to the above is in the negative, then who has the lawful right of ownership over the forfeited articles?

Petitioner herein assails the decision of the Collector of Customs of Batangas as having been made without the corresponding jurisdiction. As discussed earlier, the petitioner maintains that the complete satisfaction of the tax liabilities of an imported article or articles by the sale thereof through a public auction, divests the respondent of any jurisdiction over the rest, thus disallowing him to seize the same. Petitioner equates the jurisdiction of the Commissioner of Customs with the concept of importation as defined by Section 1202 of the Tariff and Customs Code. Thus, when importation ceases or terminates upon payment of all duties, taxes and other charges, the jurisdiction of the respondent over the imported articles also ceases.

We do not agree with the above analysis proposed by the petitioner. Section 2530 of the Tariff and Customs Code particularly subsection (e) provides the following thus:

> **Section 2530.** ***Property Subject to Forfeiture under Tariff and Customs Law.*** - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture.
>
> xxx xxx xxx
>
> (e) Any article which is fraudulently concealed in or removed contrary to law from any public or private warehouse, container yard or container freight station under customs supervision; (underscoring supplied)

The facts of this case reveal that the subject pieces of machinery were part of lot 15 which was sold in an auction sale to satisfy the unpaid taxes, duties and other charges. Such machineries were imported but later abandoned by Filipinas Marble in favor of the government. The fact that this shipment formed part of lot 15 is undisputed by both parties to this case. Petitioner admitted this in its petition for review (page 11, CTA records under Discussion I of Petition), and was likewise adopted as true by the respondent in his answer (see paragraph no. 4 of answer, page 48 of CTA records), quoted hereunder as follows:

> "The abandoned shipment became lot 15 which was awarded in a public auction sale at P61,250.00 to Engineer Franklin Policarpio."

So it remains undisputed that after the auction sale and before delivery to Mr. Policarpio, as the winning bidder, the subject articles were carted away mysteriously from customs custody and reappeared thereafter in the premises of herein petitioner. There is no question that before delivery of these items to Mr. Franklin Policarpio, these items were under the custody of the Bureau of Customs and when they were about to be handed over to Mr. Policarpio, the latter discovered the said items to be missing. The illegal withdrawal thereof from customs custody makes such subject articles forfeitable under Section 2530(e) of the Tariff and Customs Code. The opinion of the petitioner that to allow the government to recover the articles after all the tax liabilities incidental to its importation have been satisfied will constitute double recovery on the part of the government and therefore should not be allowed does not hold water because in the event that the government cannot recover the articles sold to the winning bidder, then it becomes incumbent on the part of the government as custodian of such properties to refund an amount equivalent to the value of the missing items. This will then constitute loss of revenues on the part of the government - as in reality not all the tax liabilities have been satisfied because a portion of what has been paid by virtue of the auction sale - will be given back to the winning bidder by the government. In this sense, the importation as legally defined by Section 1202 of the TCC has not yet been terminated. For purposes of clarity, Section 1202 of the Tariff and Customs Code is quoted hereunder, thus:

> **SEC. 1202. *When Importation Begins and Deemed Terminated.*** - Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with the intention to unlade therein. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.

In the instant case, the loss of the items that were supposed to be awarded to Mr. Policarpio as the highest bidder has the effect of creating an obligation on the part of the government to refund to him an equivalent amount, which leaves a portion of the taxes and duties unpaid. In this regard, we cannot say that the importation has been terminated.

Another angle advanced by the petitioner is its apparent innocence with regard to the importation of the subject articles. As an innocent buyer in good faith, the petitioner maintains that the Collector had no right to seize the items from its custody. Records however show that the petitioner has not successfully explained by competent evidence how these items, admitted to be part of lot 15, came to be in its possession. Petitioner presented two deeds of absolute sale (Exhibit "A" and "B", p. 218 to 220, CTA records), allegedly executed by the petitioner corporation as buyer and Jaina Perez as seller. Jaina Perez, the alleged seller, was never presented as a witness during the hearings of this case to testify on the alleged sale involving the two pieces of machinery, in spite of this Court's issuance of a subpoena for her appearance. The reason for this is that the subpoena was never served because the address of Jaina Perez, as appearing on the deeds of sale, does not exist. Neither did petitioner present the notaries public who allegedly acknowledged these acts. Another significant factor which led this Court to conclude that the deeds of absolute sale are weak pieces of evidence are the dates appearing in these two contracts of sale purportedly reflecting the dates when these sales took place. Exhibit "A" corresponding to the sale of one of the items missing from lot 15 was dated December 20, 1985 and the other deed of sale corresponding to the other item was dated October 28, 1986 (Exhibit "B"). We find these dates perplexing because the auction sale conducted by the Bureau of Customs for the same items was held only on April 10, 1987 as evidenced by the records of this case. How then can said items be sold to petitioner while the same were still in the custody of the Bureau of Customs at that time? From the time of its importation and subsequent abandonment by its importer to the time it was auctioned off on April 10, 1987, such items were in the possession and custody of the Bureau of Customs so it would have been legally impossible for a private person to sell the same items to any other entity. We do not know if we will condole with the petitioner and give him the common admonition of "caveat emptor", or to castigate it for presenting spurious deeds of absolute sale in an effort to establish ownership over the properties. Whichever may be the case, we give the petitioner the benefit of the doubt. However, for purposes of disposing the issues of this case, this doubt proved fatal to its claim, hence we cannot award the seized articles to herein petitioner for its failure to erase the doubts that cloud the mind of this Court. Section 2535 of the Tariff and Customs Code provides the following:

> SEC. 2535. ***Burden of Proof in Seizure and/or Forfeiture.*** - In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture

> was made under the circumstances and in the manner described in the preceding sections of this Code.

In this light, we find the evidence offered by the petitioner insufficient to establish its right to the forfeited articles.

Having determined that petitioner is not entitled to the seized articles, we nevertheless could not award the same to the government because as mentioned earlier, these articles formed part of lot 15 which was eventually sold to Mr. Franklin Policarpio as the highest bidder of such sale. It is in this status of ownership that Franklin Policarpio has the right to the seized articles and hence these items must be recovered from herein petitioner and delivered to Mr. Policarpio, the petitioner in the Policarpio case, CTA case no. 5057. It will be the height of injustice if we will allow respondent Commissioner to seize the items from the herein petitioner to enable the Bureau of Customs to sell them again, because this would now constitute double recovery on the part of the government the same items having been already sold and the proceeds thereof applied to the unpaid taxes, duties and other charges imposed incidental to their importation.

It is important to point out that in reviewing the appealed decision of the Collector of Customs of

Batangas, it became imperative for this Court to determine the question of ownership of the subject pieces of machinery which we are competent to pass upon as ruled by the Supreme Court in the case entitled **Castro vs. David, 100 Phil. 454**, thus:

> "The intervenor may ask for the dismissal of its complaint-in-intervention for the purpose of bringing an independent action in the proper competent court to recover its properties which were levied upon and distrained by the Collector and forfeited to the Government because they appear registered in the name of the plaintiff, the delinquent taxpayer; or may pursue its remedy in the Court of Tax Appeals which is competent to pass upon the incidental question of ownership to determine whether the properties levied upon and distrained by the Collector of Internal Revenue and forfeited to the Government for nonpayment of war profits tax, really belong to the delinquent taxpayer or to the intervenor.

WHEREFORE, in view of the foregoing the instant petition for review is **DISMISSED** and We hereby **AFFIRM** the authority of the respondent Commissioner of Customs to seize the subject pieces of machinery from herein petitioner and order the respondent to deliver them to the rightful owner, Engineer Franklin Policarpio, in accordance with the decision of the Court in the related case of Engr. Franklin Policarpiio vs. The Hon. Commissioner of Customs in CTA Case No. 5057, as the highest and winning bidder of the auction sale involving the very same items being disputed in the instant petition.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Associate Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals