Lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASSOCIATED BANKING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2448

COMMISSIONER OF CUSTOMS,
COLLECTOR OF CUSTOMS OF MANILA,
FEATMAC, INC.,
Respondents.

x - - - - - - - - - - - - - - - - - x

8/6/76

D E C I S I O N

Petitioner has appealed from the decision of respondent Commissioner of Customs dated August 26, 1970, ordering the forfeiture of the irrevocable domestic letters of credit in the amount of ₱642,797.25 posted by petitioner Associated Banking Corporation in favor of the Bureau of Customs in representation of the res in Customs Case No. 919, Republic of the Philippines vs. 68,987 Bags Chemical Fertilizers, FEATMAC, Inc., Claimant, Associated Banking Corporation, Intervenor-Claimant.

The following are the pertinent facts stipulated and submitted by the opposing parties:

> 1. Under date of December 2, 1966, the Associated Banking Corporation, hereinafter referred to simply as ABC Bank, opened at the behest of the Gapan Farmers Cooperative Marketing Association, Inc., two (2) separate Irrevocable Letters of Credit, in favor of Toyo Menka Kaisha, Ltd., Tokyo, to wit:
>
> a) L/C No. 1138, for U.S. $55,500.00 covering the shipment of "About 1,000 metric tons of Ammonium Sulphate Nitrogen 21% Min. packed 45 kgs. net

in 6 ply paper bags", or a total of 22,223 bags (Exh. G-Atencia, Record, II, p. 37); and

b) L/C No. 1140, for U.S. $163,770.00 covering the shipment of "About 3,000 metric tons of Ammonium Sulphate Nitrogen 21% Min, packed 45 kgms., net in 6 ply paper bags" or a total of 66,667 bags (Exh. G-1 Atencia, Record, II, p. 38);

both of which were later amended at the instance of the said Gapan Farmers Cooperative Marketing Association and Featmac, Inc., as follows:

(a) That the shipment be made to Featmac, Inc., instead of Gapan Farmers' Cooperative Marketing Association, Inc., (Exh. K; Record, II, p. 45); and

(b) That the merchandise to read "Chemical Fertilizers" instead of "Ammonium Sulphate 21 per cent Nitrogen". (See Exh. L; Record, II, p. 48);

2. That the shipments finally arrived at the port of Manila on January 21, 1967, on board the S/S "SOUTHERN EXPRESS", Reg. No. 117, under two (2) separate Bills of Lading, and consigned to two (2) distinct and different entities, to wit:

(a) B/L KM-1 covering 3,000 metric tons or 66,667 bags wherein the Consignee is designated as: "To the order of Associated Banking Corporation, Manila" /Featmac, Inc. (Exh. T; Record, II, p. 68); and

(b) B/L KM-2 covering 1,000 metric tons or 22,223 bags wherein the Consignee is designated as: "To the Order of Shipper; Featmac, Inc., 212 Bank of the P.I. Building, Plaza Cervantes, Manila" (Exh. S; Record, II, p. 63);

3. That on February 6, 1967, a permit (SPT No. 00334, Exh. U-Atencia; Record, II, p. 72) was issued by the Bureau of Customs allowing the entire shipment of 88,890 bags covered by the twp (2) Bills of Lading aforestated, transferred to Customs Bonded Warehouse No. 193-A. The Top

Service, Inc., undertook the lighterage of the shipment from the S/S "SOUTHERN EXPRESS" to the said CBW-No. 193-A, operated by the Top Brokerage Inc. (Exh. M; Record, II, pp. 52-53);

4. Under date of February 3, 1967, the ABC Bank having established the requisite Letters of Credit Nos. 1138 and 1140, in the aggregate sum of U. S. $219,270.00, referred to in paragraph 1, made arrangements with both Tops Brokerage, Inc., as operator of CBW-No. 193-A, and the importer, respondent Featmac, Inc., so that the entire shipment of 88,890 bags be stored in the said Customs bonded warehouse, per letter agreement, Exh. Q (Record, II, p. 61), quoted as follows:

"ASSOCIATED BANKING CORPORATION

February 3, 1967

Tops Brokerage, Inc.
507 Martinez Building
378 Dasmariñas, Manila

Gentlemen:

This will serve as your authority to deliver to FEATMAC, INC., the relative documents covering the shipment of 88,890 bags of Chemical Fertilizer from the SS "Southern Express" under bill of lading KM-1 and KM-2.

It is hereby understood that the entire shipment will have to be stored in your bonded warehouse.

Very truly yours,

(SGD.) R. S. RECTO
President"

We hereby undertake to deliver the shipment stated above to Tops Brokerage Co., Inc.

(SGD.) RAMON G. RAMOS, JR.
FEATMAC, INC.

REC'D. ORIGINAL
(SGD.) ANGEL LIMKIKO

5. That in February 1967, while the shipment was in the process of being transferred to the Customs Bonded Warehouse of Tops Brokerage, Inc., respondent Featmac, Inc., withdrew 19,787 bags;

6. That meanwhile, or more specifically on March 20, 1967, Customs Police Major Osmundo Victorino submitted to the respondent Collector of Customs of Manila, seizure report (Exhibit II) wherein he stated that "19,789 bags were released before reaching CBW No. 193-A". The report further stated that "the entire shipment of 88,890 bags are actually ammonium sulphate and not chemical fertilizers as declared." In view thereof, a Warrant of Seizure and Detention was issued not only against the 2,436 bags still due for delivery to Featmac, Inc., but also against the 66,667 bags consigned "to the order of Associate Banking Corporation" covered by B/L KM-1 (Exhibit T; Record, II, p. 67), or a total of 68,987 bags then still stored at CBW-193-A, under and pursuant to Section 2530 (e), (i) and (m), 3, 4 and 5 of the Tariff and Customs Code;

7. That incident to seizure proceedings No. 10715, the ABC Bank, as claimant-intervenor, filed a petition on May 23, 1967, seeking the conditional release of the shipment for 66,667 bags of chemical fertilizers, covered by its Bill of Lading KM-1, and on June 2, 1967, the Collector of Customs of Manila, granted the said petition subject to the condition that the "claimant-intervenor pays the full amount of duties, taxes and other charges due on the shipment of 3,000 m. t. of chemical fertilizers totalling ₱201,667.00 in cash, and simultaneously files a Domestic Irrevocable Letter of Credit in favor of this office in an amount equal to the appraised value of the merchandise." (Annex A, Petition; Record, I, pp. 135-136);

8. That on June 22, 1967, the ABC Bank paid in full the assessed duties and taxes on the said 3,000 m/t chemical fertilizers covered by B/L KM-1, in the amount of ₱201,667.00, as assessed by the Bureau of Customs, (Record, I, p. 126), and, in addition, tendered Irrevocable Domestic Letter of Credit No. DLC No. 0402, dated June 19, 1967, for ₱642,797.25, representing the appraised value of the 3,000 m/t, sought to be released, (Record, I, p. 125) and on June 26,

1967, the Collector of Customs of Manila, released to the said ABC Bank the shipment of 3,000 m/t Chemical Fertilizers. (Record, I, pp. 120-121);

9. That under date of September 26, 1968, the respondent Collector of Customs of Manila, rendered his decision in Seizure Identification No. 10715, declaring the forfeiture not only of the 2,437 bags, balance still due for release to Featmac, Inc., as consignee thereof, but also the 66,667 bags consigned to ABC Bank and released to it as aforestated on June 26, 1967. (Decision, Annex D, Petition; Record, I, pp. 53-59);

10. That on October 1, 1968, the ABC Bank appealed the said decision of the Collector of Customs of Manila, of September 26, 1968, to the Commissioner of Customs, and on August 26, 1970, the latter rendered his decision affirming that of the Collector of Customs of Manila;

11. That the Commissioner of Customs manifested in his order dated October 23, 1972, (Annex F, Petition; Record, I, pp. 1-3), that: " x x x it may be admitted by this Office from the circumstances surrounding this case that Intervenor-Claimant Associated Banking Corporation acted in good faith in this importation and that it absolutely has no knowledge of the acts of Featmac, Inc., to defraud the Government of its lawful revenues." (Record, I, pp. 2-3);

12. That the ABC Bank never filed any Entry over the 66,667 bags covered by B/L KM-1, consigned to its order and as such never submitted to the Collector of Customs of Manila any supporting document whatsoever;

13. That Featmac, Inc., did not appeal from the Decision of the Collector of Customs of Manila dated September 26, 1968, Annex D of the Petition; Record, I, pp. 53-59);

14. That ABC Bank's payment of ₱201,667.00 under O.R. 79795, dated June 22, 1967, by way of customs duties and taxes was as per official assessment made by the Office of the Collector of Customs of Manila on the 66,667 bags of ammonium sulphate nitrogen 21% min., consigned to its order under B/L KM-1; (Stipulation of Facts, pp. 60-66, CTA rec.)

The only issue to be decided in this appeal is whether or not the 66,667 bags of fertilizer, now represented by an irrevocable domestic letter of credit posted by petitioner Associated Banking Corporation in favor of the Bureau of Customs, with a face value of ₱642,797.25, are subject to forfeiture for violation of Section 2530 of the Tariff and Customs Code of the Philippines.

At the outset, it should be stated that forfeitures are imposed by the seizure and subsequent institution of seizure proceedings pursuant to Section 2532 of the Tariff and Customs Code. In seizure cases, one important aspect of the proceedings in the consideration of the issues involved, is the duty on the part of the government of presenting evidence which indicates probable cause for instituting such proceedings. (Sanchez v. Commissioner of Customs, B.T.A. Case No. 185, decided by the Court of Tax Appeals on November 2, 1954, citing U. S. v. One Bag of Paradise and Choura Feathers, N. Y., 356, F. 301, 167, C. C. A. 473.) The term "probable cause", which has been held synonymous with "reasonable cause", means less than the evidence which will justify condemnation. It imports a seizure made under circumstances which warrant suspicion. (Sanchez v. Commissioner, supra, citing Locke v. United States, 7 Cranch (U. S. 339.) When, therefore, respondent affirmed the decision of the Collector of Customs of

Manila ordering the forfeiture of the irrevocable domestic letter of credit in the amount of ₱642,797.25 posted by petitioner in favor of the Bureau of Customs, in representation of the *res*, what circumstances created the suspicion that the shipment of 66,667 bags of fertilizers was imported in violation of the provisions of Section 2530 of the Tariff and Customs Code?

The appealed decision mentions the following circumstances, to wit:

> "1. That as early as December 28, 1966, consignee cause the amendment of the letters of credit covering this importation of 4,000 metric tons to have the description of the goods changed from AMMONIUM SULPHATE 21% NITROGEN to CHEMICAL FERTILIZER. Since ammonium sulphate is dutiable at a higher rate (20%) ad valorem, the obvious intention of FEATMAC, INC. behind the amendment is to secure a lower assessment on these importations of 4,000 metric tons;
>
> "2. That FEATMAC, INC., suppressed the consular invoices covering these importations which correctly described the shipments as AMMONIUM SULPHATE 21% NITROGEN, despite the fact that said consular invoices were received by FEATMAC on February 3, 1967;
>
> "3. That despite the fact that 19,787 bags were already delivered to them illegally, they filed Entry No. 15171 for the release of 22,223 bags, hence, the intention to withdraw the entire shipment which were then stored in CBW 193-A and covered by Bill of Lading No. KM-1 and KM-2;
>
> "4. That in Entry No. 15171, the 22,223 bags were declared simply as CHEMICAL FERTILIZER with the rate of 5% ad valorem. Actual laboratory analysis will show that the shipment was AMMONIUM SULPHATE 21% NITROGEN with the rate of duty at 20% ad valorem, hence, fraudulent misclassification; and

"5. The C&F value as declared in the said entry was misrepresented to be ₱55,500.00 (Philippine Currency) instead of the correct C&F value appearing in the documents which was $55,500.00 (U. S. DOLLARS), hence a fraudulent undervaluation."

From the foregoing facts, respondent drew the conclusion that "fraud and bad faith prominently interplayed from the inception when claimant was preparing his supporting documents of the shipments."

Section 2530 of the Tariff and Customs Code applicable to this case provides as follows:

"SEC. 2530. - Property Subject to Forfeiture Under Tariff and Customs Laws. - Any vessel or aircraft, cargo, articles and other objects shall under the following conditions, be subject to forfeiture:

xx xx xx xx

m. Any article sought to be imported or exported:

xx xx xx xx

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article;

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.

xx xx xx xx

The emphasis is on the words - "Any article sought to be imported or exported." Accordingly, any article which is attempted or tried to be imported or exported under any of the conditions specified above is subject to forfeiture. In other words, preparatory acts, such as the wrongful or erroneous execution of declarations, affidavits, invoices or other documents concerning the importation or exportation of any article are within the scope of the plain provisions of the law even if exportation or importation has not been effected or terminated.

This brings us to the requisites for forfeiture under subparagraphs (3) and (4) of Section 2530 of the Tariff and Customs Code, *supra*. Our Supreme Court in the case of Farm Implement and Machinery Co., v. Commissioner of Customs (G. R. No. L-2212, August 30, 1968; 24 SCRA 905), ruled that the requisites for forfeiture under subparagraphs (3) and (4) of Section 1363 (m) of the Revised Administrative Code, which are now subparagraphs (3) and (4) of Section 2530 of the Tariff and Customs Code, *supra*, although there has been a slight change in the phraseology of the law are:

> (1) the wrongful making by the owner, importer, exporter or consignee of any declaration or affidavit, or the wrongful making or delivery by the same persons of any invoice, letter or paper - all touching on the importation or exportation of merchandise; and (2) that such declaration, affidavit, invoice, letter or paper is false.

// In the light of the present wordings of subparagraphs (3) and (4) of Section 2530 of the Tariff and Customs Code, *supra*, the requisites for forfeiture are:

> (1) the execution (which need not be wrongful) by the owner, importer, exporter or consignee of any declaration or affidavit, or execution

> by the same persons of any invoice or other documents concerning the importation or exportation of such article; and (2) that such declaration, affidavit, invoice or other document is false.

The owners and/or consignees or accountee of the entire shipments in question - Gapan Farmers Cooperative Marketing Association and/or Featmac, Inc., - through petitioner herein requested the amendment of the two letters of credit to change the description of the merchandise from Ammonium Sulphate 21% Nitrogen to Chemical Fertilizer. The said act was clearly intended to lower the rate of customs duties for the benefit of the importer and to the prejudice of the Government. Petitioner can not deny this motivation because Toyo Menka Kaisha, Ltd., duly advised petitioner of the amendment of both letters of credit. (Exhibits L-2 and L-3). In fact, all declarations, invoices, documents and other papers, including communications signed by petitioner's president concerning both shipments, reflected this change of description of the imported fertilizer. Since the entire shipments were Ammonium Sulphate 21% Nitrogen subject to 20% ad valorem duty instead of Chemical Fertilizer subject to 5% ad valorem duty, the falsity of the letters of credit, declarations, documents and other papers concerning the shipments in question could also be laid at the door of petitioner.

Petitioner finds solace and comfort in the belief that it acted at all times in good faith which we find to be questionable. Assuming *arguendo* that it did, it is already a settled doctrine that good faith in forfeiture proceedings is unavailing. Forfeiture is prescribed not only for fraudulent acts resulting in the loss of revenue but also for other acts which, although innocent in themselves, tend to the loss of revenue or administrative difficulty in the enforcement of Customs laws. (San Carlos Trading vs. Commissioner of Customs, CTA Case No. 31, Feb. 2, 1955, citing U. S. v. The Theophile, D. C. Tax 11 F. 696.) At any rate, it can not be denied that the 68,987 bags of chemical fertilizers were sought to be imported on the strength of a false declaration, invoice or other documents executed by FEATMAC, INC., and Gapan Farmers Cooperative Marketing Association, Inc., with the knowledge and/or consent of petitioner. Consequently, under Section 2530 of the Tariff and Customs Code, *supra*, the imported fertilizers are subject to forfeiture.

Accordingly, the decision of the respondent Commissioner of Customs dated August 26, 1970, ordering the forfeiture of the irrevocable domestic letters of credit in the amount of P642,797.25, in representation of the *res*, posted by petitioner Associated Banking Corporation in favor of the Bureau of Customs, is declared valid and justified.

WHEREFORE, finding no error in the decision of the respondent Commissioner of Customs appealed from, the same is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, August 6, 1976.

ESTANISLAO R. ALVAREZ
Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

Associate Judge AMANTE FILLER did not take part.

/dma