LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

P. L. MARKETING,
Petitioner,

- versus -

HON. GUILLERMO PARAYNO, in his capacity as Commissioner of Customs and BUENAVENTURA C. MANIEGO, District Collector of Customs, Manila International Container Port,
Respondents.

C.T.A. CASE NO. 4856

Promulgated:

JUN 24 1997

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DECISION

This is an appeal from the decision of the Commissioner of Customs affirming the decree of forfeiture handed down by the District Collector of Customs in seizure proceedings identified under Seizure Identification No. 88-313 (MICP), dated August 23, 1991.

Petitioner, P.L. Marketing, is a single proprietorship owned by Sy Pio Lato with business address at second floor General Luna St., Paco, Manila and as gathered from the testimony of the owner, said business establishment is engaged in several undertakings, one of which, is the importation of general merchandise.

The stipulation of facts agreed upon by both parties during the hearing held on March 30, 1993 established that the subject shipment arrived at the Manila Container Port from Hongkong on June 30, 1988 on board the vessel

"Okunoze". The corresponding consumption entry no. 28072-88 was filed covering the following articles:

(1)	1,200	dozens Stockings Toy	$2.20/doz.
(2)	72	dozens Toy Stationary Set	1.20/doz.
	56	dozens Toy Dolls & Accessories Set	1.30/doz.
	42	dozens Toy Diecasting Car	1.20/doz.
	8	dozens Toy B/O Sewing Machine	1.30/doz.
	60	gross Toy Plastic Snake	1.10/doz.
	120	dozens Toy Wind-up Animal Dolls	1.80/doz.
	208	dozens Toy Plastic Chess	1.50/doz.
	152	dozens Toy Plastic Robot	1.50/doz.

valued at US$3,475.50.

On July 4, 1988, agents of the Economic Intelligence and Investigation Bureau (EIIB) apprehended the truck and the van containing the subject shipment after it was released from the Bureau of Customs and was on its way to the consignee, petitioner herein. Subsequently, District Collector of Customs Emma M. Rosquete, issued a warrant of seizure and detention, dated July 14, 1988, covering the said shipment. Another important fact stipulated upon by the parties is the filing by the Ombudsman with the Sandiganbayan a criminal case against customs examiner Marcelino T. Andanar, consignee Sy Pio Lato, brokers Domeciano G. Solito and Rogelio Zafranco for fraudulent misdeclaration of imported goods involved in this case.

The Customs and CTA records reveal that seizure proceedings were conducted by the District Collector of the Manila International Container Port on the subject shipment and in a decision, dated April 23, 1991, District Collector Hermogenes F. Elfante ordered the forfeiture of said shipment in favor of the government. The goods that were forfeited consisted of several pieces of imported toys and ladies' stockings which the Collector found to be grossly undervalued in violation of Section 2530 (f) and (l), 3, 4 and 5 of the Tariff and Customs Code. Subsequently, herein petitioner filed a Motion to Re-open the case and/or Reconsideration of the aforementioned decision which was granted by the District Collector of Customs, Buenaventura C. Maniego, in an Order, dated April 23, 1992 (Exhibit 11, p. 172, CTA records). Finally, in a decision, dated August 4, 1992, District Collector Maniego reiterated his decision of forfeiture after finding that the evidence presented by the petitioner upon reopening of the case was still insufficient to disprove the findings embodied in the original decision (see Exhibit 12, p. 179, CTA records). Petitioner then appealed this decision to the Commissioner of Customs which proved to be unsuccessful as the Commissioner merely affirmed the decision of the Collector of Customs in a two-page decision, dated September 8, 1992 (Exhibit "13", p. 184, CTA records).

As a last recourse, petitioner elevated an appeal to this Court on October 8, 1992.

Petitioner assails the decree of forfeiture primarily on the ground that the agents of the EIIB did not have the authority to intercept and apprehend the truck containing the shipment without a valid search warrant. It further asserts that the EIIB conducted the inventory of the shipment without the presence of its consignee or authorized representative suggesting that said inventory was highly irregular because petitioner had no way of knowing whether or not the allegations of undervaluation of goods by the agents of the EIIB are accurate. Granting that the apprehension was lawful, petitioner asserts that the respondent has not established with satisfactory proof that there was indeed violation of Section 2503 in relation to Section 2530 (f) and (l) of the Tariff and Customs Code concerning the importation of the subject shipment.

In his Answer, respondent maintains that the EIIB agents had the requisite authority to apprehend the petitioner's shipment under Section 2203 of the Tariff and Customs Code which authorizes the EIIB to intercept, apprehend, search and seize articles that were imported in violation of Section 2530 of the same code. Respondent also defended the legality of the inventory report insisting that it was prepared in accordance with the law and the rules.

A synthesis of the allegations appearing in the petition for review and the answer brings forth the following issues:

1) whether or not the EIIB agents had the legal authority to intercept and apprehend the subject shipment after it was released from the Bureau of Customs and without a valid search warrant;

2) whether or not the inventory conducted by the EIIB of the contents of the container van was in accordance with the law and the rules;

3) whether or not the importation of the subject shipment was done in violation of Section 2530 (f) and (l): 3, 4 and 5 of the Tariff and Customs Code.

Petitioner specifically questions the legality of the interception and apprehension conducted by the agents of the EIIB of the subject shipment without a valid search warrant. It posits the theory that the agents of the EIIB are not included among those enumerated in Section 2203 of the Tariff and Customs Code, who have the police authority to enforce the tariff and customs laws. Petitioner goes on to argue that since the EIIB agents had no legal authority to seize the subject goods, then any evidence gathered from this unlawful search and seizure is inadmissible in any proceedings.

The decision of the Collector of Customs in the seizure proceedings and its subsequent affirmance by the Commissioner of Customs did not particularly tackle the issue of the legality of the search done by the EIIB agents nor did the respondent Commissioner elaborate on this issue in the Answer. However, in his memorandum, respondent submits that the authority of the EIIB to intercept is not material, what is essential is that the Bureau of Customs had the authority to seize the subject importation when the EIIB surrendered the goods to the Bureau's jurisdiction. During the hearing held on October 4, 1994, Customs Commissioner Guillermo Parayno, Jr. testified that the apprehension of the goods were conducted on the strength of a mission order issued by himself when he was still the Director of the EIIB-NCR. A photocopy of said mission order was presented as Exhibit "2" (see p. 152, CTA records). Commissioner Parayno further testified that the original of said mission order can no longer be located as the building where it was kept on file already burned down several years ago.

We find the defenses offered by the respondent with regard to the authority of the EIIB misleading and inaccurate. Respondent Commissioner of Customs is in error when he contends that the EIIB agents were authorized to conduct searches and seizures of suspected undervalued imported goods under the provisions of Section 2203 of the Tariff and Customs Code and by Section 26 of Executive Order No. 127 at the time they apprehended and seized the goods belonging to petitioner in 1988. Section 2203 of the TCCP provides a list of persons and agencies authorized to effect searches and seizures in relation to the enforcement of customs laws, and We quote, thus:

> SEC. 2203. *Persons having Police Authority.* - For the enforcement of the tariff and customs laws, the following persons are authorized to effect searches, seizures and arrests conformably with the provision of said laws.
>
> a. Officials of the Bureau of Customs, collectors, assistant collectors, deputy collectors, surveyors, security and secret-service agents, inspectors, port patrol officers and guards of the Bureau of Customs;
>
> b. Officers of the Philippine Navy and other members of the Armed Forces of the Philippines and national law enforcement agencies when authorized by the Commissioner.
>
> c. Officials of the Bureau of Internal Revenue on all cases falling within the regular performance of their duties, when the payment of internal revenue taxes are involved;
>
> d. Officers generally empowered by law to effect arrests and execute processes of

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> courts, when acting under the direction of the Collector;
>
> e. In order to avoid conflicts, and insure coordination among these persons having authority to effect searches, seizures and arrests for the effective enforcement of, and conformably with tariff and customs laws, the Secretary of Finance shall, subject to the approval of the President of the Philippines, define the scope, areas covered, procedures and conditions governing the exercise of such police authority including custody and responsibility for the goods seized. The rules and regulations to this effect shall be furnished to all the government agencies and personnel concerned for their guidance and compliance, and shall be published in a newspaper of general circulation.

A reading of the aforequoted section, particularly subsection (b), shows that persons not clearly falling under the other subsections of Section 2203 of the TCCP would need a prior authorization from the Commissioner of Customs before they can conduct, on their own, searches and seizures in the enforcement of customs laws. In resolving this particular issue, it is important to point out the date and the year when the apprehension of the subject shipment was made. The records of this case as well as facts stipulated upon by both parties reveal that the truck with the container van carrying the subject shipment was intercepted on July 4, 1988 by EIIB agents while the truck was on its way to the petitioner. In the year 1988 or prior to the issuance of Presidential Memorandum Order No. 225 on March 17, 1989 and the subsequent Memorandum of Agreement entered into between the Bureau of Customs and the EIIB, dated July 8, 1989, the EIIB had no authority to conduct apprehensions and seizures of suspected smuggled goods without prior authorization from the Commissioner of Customs. This Memorandum Order No. 225 signed by then President of the Philippines, Corazon C. Aquino, and the Memorandum of Agreement entered into between the Bureau of Customs and various government agencies including the EIIB had the consequential effect of granting the latter agency the power to effect searches and seizures of suspected smuggled goods but with the obligation to surrender the seized goods to the Bureau of Customs within a certain period of time. However the said Memorandum Order and the Memorandum of Agreement both took effect in 1989. Hence, in 1988 when the apprehension was made on petitioner's shipment, the EIIB lacked the requisite authority to seize the goods in question without prior authorization from the Commissioner of Customs. Respondent did not present any evidence to show that the EIIB was authorized to conduct the apprehension and seizure of petitioner's goods. Respondent however presented a Mission Order, dated July 1, 1988, and notarized on September 26, 1988 (Exhibit "2") issued by Mr. Guillermo Parayno, Jr., who was then the Director of the EIIB-NCR and who is now the Commissioner of Customs. This Mission Order directed the agents named therein to apprehend the subject shipment. It is important to note that the EIIB director in issuing the mission order did not coordinate with the Commissioner of Customs as to the planned seizure. In fine, the EIIB acted alone and this is evidenced by the testimony of Commissioner Parayno during the hearing held on October 4, 1994, when he testified in this manner:

> Q. On July 1 of 1988, wherein you issued a mission order to Agents of the EIIB, did you ever coordinate with the Bureau of Customs on such date with regards to the issuance of the mission order?
>
> A. No, I didn't have the time to coordinate because as I explained earlier, the container van was already rolling out of the port at the time it was reported to me.

A mission order issued by the Director of the EIIB without any prior authority or at the very least coordination from the Bureau of Customs is not sufficient to confer upon the EIIB agents the legal authority to seize the subject shipment. We also do not agree with the respondent's contention that Section 26 of Executive Order No. 127 grants the EIIB agents the power to apprehend, search and seize suspected smuggled goods without any prior authorization from the Commissioner of Customs. Section 26 of Executive Order No. 127, the law which created the EIIB, clearly provides the functions of this agency, thus:

> SEC. 26. *Economic Intelligence and Investigation Bureau.* - The Economic Intelligence and Investigation Bureau, which shall be headed by and subject to the supervision and control of the Commissioner who shall be appointed by the President upon the recommendation of the Minister, shall have the following functions:
>
> (a) Receive, gather and evaluate intelligence reports and information and evidence on the nature, modes and extent of illegal activities affecting the national economy, such as, but not limited to, economic sabotage, smuggling, tax evasion, and dollar-salting, investigate the same and aid in the prosecution of cases;
>
> (b) Coordinate with external agencies in monitoring the financial and economic activities of persons or entities, whether domestic or foreign, which may adversely affect national financial interest with the goal or regulating, controlling or preventing said activities;
>
> (c) Provide all intelligence units of operating Bureaus or Offices under the Ministry with the general framework and guidelines in the conduct of intelligence and investigation works;
>
> (d) Supervise, monitor and coordinate all the intelligence and investigation operations of the operating Bureaus and Office under the Ministry;

(e) Investigate, hear and file, upon clearance by the Minister, anti-graft and corruption cases against personnel of the Ministry and its constituent units;

(f) Perform such other appropriate functions as may be assigned by the Minister or his deputies.

It is a well-settled rule of statutory construction that the grant of powers shall be strictly construed. Since administrative agencies are purely creatures of legislation without inherent or common law powers, the general rule applied to statutes granting powers to them are those powers which are conferred either expressly or by necessary implication (65.02, p. 149-150, Vol. 3, Sutherland Statutory Construction). This Court cannot presume that to "receive, gather and evaluate intelligence reports and information" as provided in Section 26 includes the absolute power to intercept, apprehend and seize container vans suspected of carrying misdeclared or undervalued imported goods. The conferment upon a particular agency of police authority must be expressly granted as this authority is a powerful tool that may be misused and abused to the detriment of the rights of ordinary citizens. This is particularly true in customs cases wherein no search warrant is required to effect search and seizure of suspected smuggled goods except in the search of a dwelling place

(Papa vs. Mago, 22 SCRA 857). Therefore, stringent requirements must be followed in determining who may be authorized to conduct searches and seizures of suspected smuggled goods. It will be a dangerous precedent to let the Commissioner of Customs get away with the argument that the EIIB agents may, without a search warrant, apprehend and seize any suspected smuggled goods under the provisions of the Tariff and Customs Code and Executive Order No. 127 because nowhere in the laws mentioned authorize the EIIB the power to effect search and seizure on their own. It is clear from the provisions of Section 26 of E.O. 127 that the EIIB shall be "subject to the supervision and control of the Commissioner".

The conclusion that now faces this Court is that the search and subsequent seizure conducted on the subject shipment by the EIIB agents on July 4, 1988 was in violation of Section 2, Article III of the 1987 Constitution, more commonly called the "search and seizure clause" of the Constitution which provides as follows:

> SEC. 2. *The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon*

> *probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.*

We do not agree with the view held by the respondent when he argued that "the authority of the EIIB to intercept is not material, what is material is that the Bureau of Customs had the authority to seize the subject importations when the EIIB surrendered the goods to the bureau's jurisdiction" (respondent's Memorandum, p. 248, CTA records). In effect, the respondent wants us to believe that the method or manner used to seize the goods is not important, what is essential is that the goods seized by whatever means possible were eventually surrendered to the agency having the authority to seize the same. Again, we find this argument untenable. In determining whether or not there was a violation of the person's right against unreasonable search and seizure, it is equally important to consider the manner by which the search and seizure was effected. In Alvarez vs. **Court of First Instance of Tayabas**, 64 Phil. 33, the Supreme Court held:

> "What constitutes a reasonable or unreasonable search and seizure in any particular case is purely a judicial question, determinable from a consideration of the circumstances involved, including the purposes

of the search, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured." (Underscoring supplied)

The facts of this case point out that unauthorized persons, without a search warrant, apprehended, searched and seized the subject shipment in violation of a clear constitutional guarantee.

This Court is well aware that smuggling is a crime which must be stamped out as it deprives the government of revenues vital for our economic recovery, but the nobility of the purpose does not justify the violation of the constitutional rights of citizens. The Supreme Court has ruled, in the case of People vs. Aminnudin, 163 SCRA 402, thus:

"x x x The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions."

Similarly in the case of Alvarez vs. The Court of First Instance of Tayabas, 64 Phil. 33, the Supreme Court held:

"While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced, without transgressing the constitutional rights of citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government."

Lastly, in **Viduya vs. Berdiago**, 73 SCRA 553, the Supreme Court ruled:

> "It is not for this Court to do less than it can to implement and enforce the mandates of the customs and revenue laws. The evils associated with tax evasion must be stamped out - without any disregard, it is to be affirmed, of any constitutional right." (Underscoring supplied)

All illegal searches and seizures are unreasonable while lawful ones are reasonable (**Alvarez vs. Court of First Instance of Tayabas**, [supra]). Having established that the search conducted was illegal, all evidence obtained during said unlawful search is inadmissible in evidence (**People vs. Cendana**, 190 SCRA 538; **Stonehill vs. Diokno**, 20 SCRA 383). This exclusionary rule is clearly mandated by the Constitution particularly Section 3(2) of Article III: any evidence obtained in violation of this ... shall be inadmissible for any purpose in any proceeding. In the case entitled **Nolasco v. Paño**, 147 SCRA 509, the Supreme Court clearly reiterated this rule when it declared, thus:

> "With the Court now unanimously upholding the exclusionary rule, in toto, the constitutional mandate is given full force and effect. This constitutional mandate expressly adopting the exclusionary rule has proved by

> historical experience to be the practical means of enforcing the constitutional injunction against unreasonable searches and seizures by outlawing all evidence illegally seized and thereby removing the incentive on the part of the military and police officers to disregard such basic rights."

More importantly, as a result of the illegal search and seizure, petitioner herein did not deserve the deprivation of its property, in the manner just described, hence the forfeiture decreed by the Collector which eventually led to the loss of property should be reversed.

WHEREFORE, in view of the foregoing, the decision of the Commissioner of Customs ordering the forfeiture of subject shipment belonging to petitioner is **REVERSED**. The respondent Commissioner of Customs is hereby **ORDERED** to **RELEASE** the goods forfeited under Seizure Identification No. 88-313 to petitioner or if they can no longer be located in the Customs premises, to pay the equivalent amount of the goods seized which was valued at the time of its importation on June 30, 1988 at US Dollars Three Thousand Four Hundred Seventy Five and Fifty cents (US$3,475.50) per Consumption Entry No. 28072-88 to be converted in Philippine peso at the current rate of exchange prevailing at the time the corresponding writ of execution is issued when this decision becomes final and executory. This will afford the petitioner to import the same articles and quantity of goods illegally seized or to at least compensate for the damages it has sustained as a result of the illegal seizure.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with 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